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CONTEMPORARY FORMS OF SLAVERY

Updated review of the implementation of and follow-up to the conventions on slavery

Working paper prepared by Mr. David Weissbrodt[1] and Anti-Slavery International[2]

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Introduction

1 At its twenty-third session in 1998 the Working Group on Contemporary Forms of Slavery "asked David Weissbrodt and Anti-Slavery International to prepare a comprehensive review of existing treaty and customary law covering all the traditional and contemporary slavery-related practices and relevant monitoring mechanisms" [3] At its twenty-fourth session in 1999 the Working Group received a working paper containing a consolidation and review of the conventions on slavery and an executive summary of that paper (E/CN 4/Sub 2/AC 2/1999/6) The working paper provided an update of the two previous studies by members of the Sub-Commission on the subject of slavery, by Mohamed Awad in 1966[4] and the update by Benjamin Whitaker in 1984 [5] The Working Group expressed its appreciation for the review of the conventions on slavery and the related executive summary, it also recommended to the Sub-Commission that the Sub-Commission invite the authors of the review of international standards to update the review and submit it to the Sub-Commission for its consideration and eventual transmission to the Commission

2 At its fifty-first session the Sub-Commission on the Promotion and Protection of Human Rights adopted resolution 1999/17 of 26 August 1999 in which it expressed its appreciation to David Weissbrodt and Anti-Slavery International for their consolidation and review of the conventions on slavery and for the executive summary In that resolution the Sub-Commission also invited "the authors of the review of international standards to update the review and submit it to the Sub-Commission for its consideration and eventual transmission to the Commission" This updated review responds to that invitation, provides a further update on the Awad and Whitaker studies, and summarizes the core international law against slavery its origins and the progress of the international campaign to abolish the slave trade and slavery, the legal instruments and institutions which have been established to combat slavery (including the United Nations Working Group on Contemporary Forms of Slavery), the evolving definition of slavery, contemporary forms of slavery, and other related practices It then focuses briefly on serfdom, forced labour, debt bondage, migrant workers, trafficking in persons, prostitution, forced marriage, the sale of wives and other issues, before discussing international monitoring mechanisms The review ends with tentative conclusions and recommendations This review is accompanied by an addendum (E/CN 4/Sub 2/2000/3/Add 1) that provides a more comprehensive discussion of the various forms of slavery

No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms[6]

I CORE INTERNATIONAL LAW AGAINST SLAVERY

A Background

3 Although slavery has existed since ancient times,[7] the 1815 Declaration Relative to the Universal Abolition of the Slave Trade was the first international instrument to condemn it The abolitionist movement began as an effort to stop the Atlantic slave trade and to free slaves in the colonies of European countries and in the United States A large number of agreements dating from the early nineteenth century, both multilateral and bilateral, contain provisions prohibiting

such practices in times of war and peace. It has been estimated that between 1815 and 1957 some 300 international agreements were implemented to suppress slavery. None has been totally effective.

4. The predecessor of the United Nations, the League of Nations, was very active in its work to eliminate slavery, and as a result international attention focused on the elimination of slavery and slavery-related practices following the first world war.[8] After the second world war the United Nations continued working towards the elimination of slavery, and as a result it is now a well-established principle of international law that the "prohibition against slavery and slavery-related practices have achieved the level of customary international law and have attained 'jus cogens' status".[9]

5. The International Court of Justice has identified the protection from slavery as one of two examples of "obligations erga omnes arising out of human rights law",[10] or obligations owed by a State to the international community as a whole. The practice of slavery has thus been universally accepted as a crime against humanity, and the right to be free from enslavement is considered so fundamental "that all nations have standing to bring offending States before the Court of Justice".[11] Slavery, slave-related practices, and forced labour constitute:

(a) A "war-crime" when committed by a belligerent against the nationals of another belligerent;

(b) A "crime against humanity" when committed by public officials against any person irrespective of circumstances and diversity of nationality;

(c) A common international crime when committed by public officials or private persons against any person.[12]

B. Definition of slavery: the Slavery Convention of 1926 and the Supplementary Convention of 1956

6. The definition of slavery has caused controversy since the beginning of the abolition process, yet is of paramount importance for the international community in working towards its effective eradication. Definitions have caused controversy for two reasons: first, there are differences of opinion about which practices should be categorized as slavery and thus designated for elimination; second, definitions have often been accompanied by obligations on States to carry out particular remedial measures. There has invariably been disagreement about the most appropriate strategies to eradicate any form of slavery.

7. In order for the United Nations or any other international body to carry out a mandate concerned with slavery effectively, it is necessary to develop an international consensus on what practices are included within the concept of slavery. If the term is interpreted in such a manner as to include all of the social injustices or human rights violations that may occur, it becomes so broad as to be meaningless. This overbroad approach in turn would lead to a dilution of the work against slavery and reduce its effectiveness in achieving its objective of eliminating slavery. Slavery as defined in the international instruments must, therefore, be reviewed in an effort to identify the practices included within its scope.

8. A definition of slavery first appeared in an international agreement in the League of Nations Slavery Convention of 25 September 1926. It defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (art. 1 (1)). It further defined the slave trade as "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves" (art. 1 (2)). The Convention also distinguished forced labour, stipulating that "forced labour may only be exacted for public purposes" and requiring States parties "to prevent compulsory or forced labour from developing into conditions analogous to slavery" (art. 5).

9. Before the Slavery Convention various forms of slavery had been identified in a list prepared by the Temporary Slavery Commission in 1924 and subsequently approved by the Council of the League of Nations. In addition to enslavement, slave raiding, the slave trade, and slave dealing, the list included

> "1. (c) Slavery or serfdom (domestic or predial);
>
> "2. Practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery, as for example:
>
> "(a) Acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs;
>
> "(b) Adoption of children, of either sex, with a view to their virtual enslavement, or the ultimate disposal of their persons;
>
> "(c) All forms of pledging or reducing to servitude of persons for debt or other reason ... [and]
>
> "4. System of compulsory labour, public or private, paid or unpaid."[13]

10. By referring to "any or all of the powers of ownership" in its definition of slavery, and setting forth as its stated purpose the "abolition of slavery in all its forms" the Slavery Convention covered not only domestic slavery but also the other forms of slavery listed in the Report of the Temporary Slavery Commission.[14]

11. Although the Slavery Convention outlawed slavery and associated practices, it not only failed to establish procedures for reviewing the incidence of slavery in States parties, but also neglected to create an international body which could evaluate and pursue allegations of violations. Despite these drawbacks, the League of Nations was able, through publicity and pressure on Governments, to encourage the implementation of legislation abolishing slavery in countries such as Burma (1928) and Nepal (1926).[15] In 1931 the League established committees of experts to consider information about slavery, but the work of the second of these bodies, the Advisory Committee of Experts on Slavery, was ended by the outbreak of the second world war.

12. The period before the second world war also saw the adoption of a series of international conventions concerning the traffic of women for prostitution. These abuses were not mentioned in the Slavery Convention, nor addressed by the various committees of experts on slavery, although the first of the international conventions on traffic in women referred in its title to the "white slave trade" [16]

13. In 1949, the United Nations Economic and Social Council appointed an Ad Hoc Committee of Experts on Slavery which found that there was "not sufficient reason for discarding or amending the definition contained in article 1 of the Slavery Convention 1926". [17] The Committee did point out, however, that the definition in the Slavery Convention did not cover the full range of practices related to slavery and that there were other equally repugnant forms of servitude that should be prohibited. The Committee thus recommended that a supplementary convention be drafted to cover practices analogous to slavery - many of which had been identified by the League of Nations when preparing the earlier convention.

14. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 "went further and covered more ground than the 1926 Convention". [18] It obliged States parties to abolish, in addition to slavery, the following institutions and practices, identified collectively as "servile status". [19]

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any person or group; or

(ii) The husband of a woman, his family, or his clan has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

15. The inclusion of practices such as serfdom was somewhat confusing as they were covered by the Slavery Convention. Article 1 of the Supplementary Convention consequently clarified that States parties should seek "the complete abolition or abandonment" of the various institutions and practices which were identified "where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention".

16. Although there have been subsequent appeals made to redefine slavery in the context of today's world, the combined definition of slavery set forth in the Convention of 1926 and the Supplementary Convention of 1956 has remained unchanged. The United Nations has made various restatements of the definition,[20] but in the international legal context the definition has not been altered substantially since 1926.

C. Main characteristics of slavery

17. Ownership is the common theme existing in all of the conventions concerning the abolition of slavery and slavery-like practices. The wording of the Slavery Convention is ambiguous as to whether this concept of control must be absolute in nature in order to be considered a prohibited activity. Arguably, the use of the phrase "any or all of the powers attaching to the right of ownership" (art. 2) was intended to give a more expansive and comprehensive definition of slavery which would include not just the forms of slavery involved in the African slave trade, but also practices of a similar nature and effect.

18. Traditional slavery was referred to as "chattel slavery" on the grounds that the owners of such slaves were able to treat them as if they were possessions, like livestock or furniture, and to sell or transfer them to others. Such practices are extremely rare nowadays and the criterion of ownership may obscure some of the other characteristics of slavery associated with the complete control to which a victim of slavery is subjected by another human being, as implied by the Slavery Convention's actual wording, "any or all of the powers attaching to the right of ownership".

19. The circumstances of the enslaved person are crucial to identifying what practices constitute slavery, including: (i) the degree of restriction of the individual's inherent right to freedom of movement; (ii) the degree of control of the individual's personal belongings; and (iii) the existence of informed consent and a full understanding of the nature of the relationship between the parties.

20. It will become apparent that these elements of control and ownership, often accompanied by the threat of violence, are central to identifying the existence of slavery. The migrant worker whose passport has been confiscated by his or her employer, the child sold into prostitution, or the "comfort woman" forced into sexual slavery - all have the element of choice and control of their lives taken from them and passed to a third party, either an individual or a State.[21]

D. Other instruments prohibiting slavery

21. The prohibitions set out in the Slavery Convention and the Supplementary Convention were given significant legal support by the *International Bill of Human Rights*. *The Universal* Declaration of Human Rights states that "No one shall be held in slavery or servitude; slavery

and the slave trade shall be prohibited in all their forms" (art. 4). The International Covenant on Economic, Social and Cultural Rights recognizes the right to work "which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" (art. 6 (1)). In articles 5, 7, and 8 the Covenant further sets certain conditions and rights that must be upheld and protected by the States parties such as fair wages and equal remuneration for work of equal value and the right to form and join trade unions.

22. The International Covenant on Civil and Political Rights in article 8 contains a prohibition against slavery and servitude similar to that contained in the Universal Declaration. The importance accorded by the Covenant to the slavery provision is emphasized by its status as a non-derogable right under article 4 (2). Article 8 also contains a provision which prohibits the use of forced or compulsory labour subject to certain limited exceptions.

23. The most recent reference to slavery in an international instrument is in article 7 (2) (c) of the Rome Statute of the International Criminal Court, which characterizes "enslavement" as a crime against humanity falling within the jurisdiction of the Court.

E. Violations of other fundamental rights associated with slavery

24. The process of enslavement, as well as, in many cases, the treatment of victims of slavery, servile status and forced labour, is often accompanied by other violations of human rights. For example, the classic process of enslavement, involving either abduction or recruitment through false promises or duplicity, involves a violation of the individual's right to liberty and security of person, as guaranteed by article 9 of the International Covenant on Civil and Political Rights, together in many cases with a violation of the right of a person deprived of his/her liberty to be treated with humanity and of the right not to be subjected to cruel, inhuman or degrading treatment.[22] Historical images of slavery, again based on the Atlantic slave trade and treatment of African slaves in the Americas, focus primarily on the ill-treatment of slaves, particularly branding or mutilation of individuals to facilitate their identification. The Supplementary Convention of 1956 explicitly prohibits "the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to indicate his status, or as a punishment, or for any other reason ..." (art. 5). Other forms of ill-treatment, including beatings and other corporal punishment, are a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[23]

25. Victims of slavery, servile status and forced labour are, almost by definition, deprived of their right under article 12 of the International Covenant on Civil and Political Rights to liberty of movement and freedom to choose their residence. Almost invariably, they are deprived of or prevented from exercising their right of access to the courts and to a fair trial[24] by their owners, controllers, employers, or by the authorities themselves.

26. The list of aggravating circumstances, of abuses of fundamental rights which accompany slavery and related abuses is almost endless. In the harshest cases it includes depriving individuals of their identity (by giving them a new name, often one associated with a different religion or ethnic identity), obliging them to speak a new language, and forcing them to change their religion or subjecting them to coercion in violation of article 18 of the International Covenant on Civil and Political Rights.[25] Some extreme cases also involve preventing

individuals from exercising their right to marry and to establish a family,[26] notably when the victims are women who are forced to act as the mistresses or concubines of the men who control them, or are forced to remain in prostitution. Virtually all cases involve violations of the victims' freedom of expression, their right to receive and impart information, their right of peaceful assembly, and their freedom of association.

27. In some societies slaves have been prevented from owning or inheriting property. One of the legacies of slavery still affecting people categorized as "slaves" in one country where slavery has been formally abolished on several occasions is that, on the death of former slaves, the families of their former owners still intervene to take possession of their property - sometimes with the authority of the courts - thus preventing the heirs of former slaves from inheriting.[27] Such practices violate article 17 of the Universal Declaration, as well as article 26 of the International Covenant on Civil and Political Rights. Former slaves, their descendants, or others regarded socially as having slave status are subjected to a wide range of discrimination in many societies.

II. FORMS OF SLAVERY

28. In this section the review will summarize briefly the various forms of slavery. For a more comprehensive discussion of these issues, see the addendum to the present document.

A. Serfdom

29. The Supplementary Convention of 1956 categorizes serfdom as a form of "servile status", and defined it as "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status" (art. 1 (b)). Land tenure systems viewed in all their aspects - legal, economic, social and political - can in certain circumstances be seen as oppressive power relationships arising from ownership or use of land and disposition of its products to create forms of servitude and bondage.[28] Both serfdom and debt bondage are sometimes referred to by the term "peonage", particularly in the Latin American context.[29]

B. Forced labour

30. The use of forced labour has been condemned by the international community as a practice similar to, but distinct from slavery. The League of Nations and the United Nations have made a distinction between slavery and forced or compulsory labour and the International Labour Organization was given principal responsibility for the abolition of the latter.

1. International Labour Organization

31. The International Labour Organization (ILO) has adopted 182 conventions in the international labour code on issues ranging from protection of maternity to protection of the most vulnerable and poverty-stricken labourers. The ILO has four fundamental principles which it

aims to achieve, namely: the elimination of forced labour; freedom of association, including the right to form or join a trade union; the effective abolition of child labour; and the ending of discrimination in employment.[30]

2. Forced labour conventions

32. The Forced Labour Convention, 1930 (No. 29) provides for the abolition of forced labour.[31] It defines forced or compulsory labour in article 2 (1) as meaning "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". It is clear from this description that forced labour as understood by the international community does not include a concept of ownership as does slavery. Yet the practice imposes a similar degree of restriction on the individual's freedom - often achieved through violent means.

33. The Abolition of Forced Labour Convention, 1957 (No. 105) provides for the immediate and complete eradication of forced labour in specific circumstances. Article 1 imposes an obligation on the State parties to suppress the use of forced labour for political purposes, for purposes of economic development, as a means of labour discipline or punishment for strike action, and as a means of discrimination. ILO Convention No. 29 and ILO Convention No. 105 (collectively referred to as the "ILO forced labour conventions") concerning the abolition and control of forced labour are essentially the only international instruments that set out a definition of forced labour, although its prohibition is endorsed by many treaties, both international and regional.

34. It should be noted, however, that not all forms of forced labour are prohibited under the ILO forced labour conventions. Article 2 (2) of Convention No. 29 sets out certain specific exemptions which otherwise would have fallen under the definition of forced or compulsory labour. The ILO forced labour conventions do not prohibit prison labour but they do place restrictions on its use. Convention No. 29 exempts from its provisions "any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country" and excludes "any work or service exacted in virtue of compulsory military service laws for work of a purely military character". The right of a Government to exact forced labour in times of emergency is also exempted from the forced labour conventions. Examples of such circumstances include "war or ... a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic ..." Convention No. 29 also exempts minor communal services "being performed by the members of the community in the direct interest of the said community".

3. Other relevant human rights instruments

35. In addition to the two International Covenants on Human Rights, the General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1973, outlawing a number of inhuman acts committed for the purpose of establishing and maintaining domination by one racial group over any other, including exploitation of the labour of the members of a racial group or groups by submitting them to forced labour.

36. Regional agreements have subsequently come into force which contain similar provisions to the two International Covenants, such as the American Convention on Human Rights (art. 6) and the African Charter on Human and Peoples' Rights (art. 5). The European Commission on Human Rights identified two factors that must be present when considering forced or compulsory labour, "firstly, that the work is performed against the complainant's will and secondly, that the work entails unavoidable hardship to the complainant".[32]

37. Other categories of practices similar to slavery that have over the years been incorporated into the forced labour concept by the ILO include debt bondage and child labour. These categories are considered under separate headings below.

C. Debt bondage

38. Debt bondage (often termed "bonded labour", which refers to exactly the same practices) is defined in the Supplementary Convention as the "status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (art. 1 (a)). The Supplementary Convention characterizes debt bondage as a "servile status" (art. 7 (b)) and obliges the States parties to implement national provisions to abolish it.

39. Although the ILO did not include debt bondage in the definition of forced labour in Convention No. 29, there does appear to be a consensus that the two practices overlap. The preamble to Convention No. 105 refers specifically to the Supplementary Convention, noting that it provides for the complete abolition of "debt bondage and serfdom". "Forced labour" is a broad term and the ILO has confirmed that there is a very wide range of practices that affect the freedom of workers which lead to varying degrees of compulsion in their work. The ILO has over time included debt bondage within the ambit of Convention No. 29.

40. The ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182) specifically includes debt bondage and its suppression. The Convention concerning Basic Aims and Standards of Social Policy, 1962 (No. 117) is particularly concerned with reducing forms of wage payment that foster indebtedness.[33] The objective of the Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, 1970 (No. 131)[34] and its accompanying Recommendation No. 135, are to give wage-earners the necessary social protection in terms of minimum permissible levels of wages.[35] The Convention concerning the Protection of Wages, 1949 (No. 95)[36] requires wages to be paid regularly by employers and prohibits methods of payment that deprive workers of the genuine possibility of terminating their employment.

D. Exploitation of migrant workers

41. While all the existing instruments concerning slavery, servile status and forced labour apply to aliens and migrant workers as well as others, certain techniques of exploitation akin to slavery affect migrant workers in particular. These practices include employers confiscating workers' passports and, particularly in the case of domestic workers, keeping them in virtual captivity. They require special remedial action.[37] Migrant workers are subjected to a wide range

of abuse and discrimination, most of which do not constitute slavery, servitude, or forced labour. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the United Nations in 1990 in an attempt to counter these practices, but it has not yet entered into force. The ILO has also adopted a series of conventions to address the employment of migrant workers.

E. Trafficking

42. The International Convention for the Suppression of the White Slave Traffic of 1910 imposed an obligation on the parties to punish anyone who recruits a woman below the age of majority into prostitution, even with her consent. In 1933, article 1 of the International Convention for the Suppression of the Traffic of Women of Full Age established a duty to prohibit, prevent and punish the trafficking of women even when done with their consent.

43. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (the Suppression of Traffic Convention) consolidated the earlier instruments relating to the "white slave trade" and traffic in women and children[38] and today forms the legal basis of the international protection against the traffic in persons. The Suppression of Traffic Convention makes it an offence to procure, entice or lead away a person for the purposes of prostitution even with the consent of that person (art. 1 (1)). Although recruitment need not be across international borders to qualify as "trafficking" under the Suppression of Traffic Convention, the parties are required to monitor immigration and emigration routes in order to halt trafficking for prostitution (art. 17). Article 1 of the Suppression of Traffic Convention requires the woman or man being trafficked to have been recruited "to gratify the passions of another" and "for purposes of prostitution".

44. There have been various suggestions since the Suppression of Traffic Convention was adopted in 1949 that the definition of "traffic in persons" should be extended to cover forms of recruitment which are not directly linked to prostitution, and also the movement of men, women, or children across international frontiers for purposes other than prostitution, when they are being subjected to coercion or are being deceived about the nature of the situation which awaits them.

45. The Convention on the Elimination of All Forms of Discrimination against Women includes in its article 6 the obligation that States parties suppress trafficking in women. The Declaration on the Elimination of Violence Against Women[39] also forbids "trafficking in women".

46. The Convention on the Rights of the Child specifically prohibits trafficking in children. The Inter-American Convention on International Traffic in Minors, adopted by the Organization of American States (OAS) on 18 March 1994, defines the scope of traffic (or trafficking) in children in greater detail than any other instrument. A working group of the Commission on Human Rights has prepared a draft Optional Protocol to the Convention on the Rights of the Child dealing specifically with the sale of children, child prostitution and child pornography. At its fifty-sixth session in March/April 2000, the Commission, by resolution 2000/59 of 26 April 2000, transmitted the draft Optional Protocol to the General Assembly, through the Economic and Social Council, for adoption

47. In 1998, the General Assembly established an open-ended intergovernmental ad hoc committee for the purpose of elaborating an International Convention against Transnational Organized Crime and discussing the elaboration of international instruments addressing trafficking in persons, particularly women and children, and the illegal trafficking in and transporting of migrants, in addition to other issues such as illegal trafficking in firearms.

48. The Working Group on Contemporary Forms of Slavery has recognized the variety of circumstances in which trafficking occurs, adopting at its 1998 session one recommendation dealing with traffic in persons and exploitation of the prostitution of others, and another dealing with prevention of the transborder traffic in women and girls for sexual exploitation.[40] The latter explicitly declares that "transborder trafficking of women and girls for sexual exploitation is a contemporary form of slavery and constitutes a serious violation of human rights".[41]

F. Prostitution

49. The Suppression of Traffic Convention requires States to punish "any person who, to gratify the passions of another ... procures, entices or leads away, for purposes of prostitution, another person ... [or] otherwise exploits the prostitution of another person" (art. 1 (1) and (2)). The prohibition refers both to cases in which the prostitute is subjected to some form of coercion, as well as to acts carried out "with the consent of that person" (art. 1 (2))[42].

50. International instruments do not contain a definition of prostitution, though it is most commonly interpreted according to its ordinary meaning, that is "any sexual act offered for reward or profit". The Suppression of Traffic Convention makes it clear that the reference to prostitution includes men practising prostitution, as well as women and children under the age of 18. The act of prostitution itself committed by adults over 18 is not explicitly prohibited by international standards but the Suppression of Traffic Convention strongly discourages it.[43] Other international instruments clearly consider the exploitation of prostitution - when money made through prostitution is passed on a systematic basis to anyone other than the prostitute herself - as a form of slavery.[44]

51. While there is continuing debate about whether adult prostitution should be tolerated in some circumstances, the Convention on the Rights of the Child clearly prohibits all forms of sexual exploitation and sexual abuse (art. 34).

52. The concept of sexual slavery is closely related to that of forced prostitution but is a distinct form of sexual exploitation. There does not have to be any financial gain in sexual slavery; it is merely the imposition of absolute control or power of one person over another. It is the sexual exploitation of individuals through the use or threat of force, often occurring in times of armed conflict or belligerent occupation. Sexual slavery violates the fundamental guarantees of basic human rights in the International Bill of Human Rights and the four Geneva Conventions of 12 August 1949 for the protection of war victims applicable during periods of armed conflict.

G. Forced marriage and the sale of wives

53. The Supplementary Convention of 1956 identifies institutions or practices akin to slavery to which women can be subjected in the context of marriage (art. 1 (c)). These practices also violate the Universal Declaration which provides that "[m]arriage shall be entered into only with the free and full consent of the intending spouse" (art. 16 (2)). Accordingly, the Supplementary Convention prohibits the sale or transfer of a woman into a forced marriage as well as the inheritance of a widow on her husband's death by a member of her deceased husband's family.

H. Child labour and child servitude

54. A number of international standards address the issue of the exploitation of children's labour, in particular by seeking to prohibit employment below a specified minimum age. Other standards identify circumstances or conditions in which no children may be employed. Not all forms of child labour fall within the definition of slavery or servitude. The Supplementary Convention of 1956 specifically prohibits the delivery of a child with the intent to exploit the child's labour (art. 1 (d)).

I. Other issues

55. There are a number of other issues which have been considered by the Working Group on Contemporary Forms of Slavery, including apartheid, colonialism, trafficking in human organs and incest. Although these practices generally constitute serious violations, they may not all fall within the ambit of the international conventions abolishing slavery.

III. INTERNATIONAL MONITORING MECHANISMS

56. National authorities possess the primary obligation to protect the human rights of residents, including, of course, the prohibition of slavery and slavery-like practices.[45] The efforts of national authorities are augmented, however, by international human rights norms and procedures for implementing and ensuring compliance with international human rights treaties. For example, the International Covenant on Civil and Political Rights prohibits "slavery and the slave-trade in all their forms" (art. 8) and establishes a Human Rights Committee to monitor compliance. That treaty and international law generally recognize that Governments are obligated "to respect and to ensure to all individuals within its territory and subject to its jurisdiction" the guaranteed rights and "to take the necessary steps, in accordance with its constitutional processes and with the provisions of the [treaty], to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the [treaty]" (art. 2). The primary responsibility of national authorities to protect human rights is underlined by the general rule of international law that all available domestic remedies must be exhausted before resorting to international settlement procedures.[46] There are therefore important links between national and international monitoring methods that cannot be overlooked, although the focus of this section is on international mechanisms.

57. International human rights law has evolved a number of mechanisms for ensuring implementation and monitoring. Since the adoption of the International Covenant on Civil and Political Rights in 1966 all major human rights treaties have provided for an expert body, such as

the Human Rights Committee under the International Covenant on Civil and Political Rights, to oversee implementation of their respective multilateral conventions by receiving and reviewing periodic reports from the Governments that have ratified the relevant treaties. Most of the treaty bodies issue conclusions and recommendations after reviewing each State party's report. Most of the treaty bodies also occasionally issue general comments or recommendations that authoritatively construe provisions of their treaties and summarize their experience in reviewing States parties' reports. Further, three of the treaty bodies - the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture - may receive communications from individuals complaining about violations of those treaties and thus issue adjudicative decisions interpreting and applying treaty provisions. A fourth, the Committee on the Elimination of Discrimination against Women, will be able to do so once the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly on 6 October 1999 in resolution 54/4, enters into force.[47]

58. Under the authority of the Charter of the United Nations rather than on the basis of a specific human rights treaty, the United Nations Commission on Human Rights has developed several additional mechanisms for monitoring human rights. One of the most visible measures which the Commission has taken with respect to a violating State is to authorize a special rapporteur, special representative, or a working group to investigate and publish a report on the situation. The Commission has also established thematic special rapporteurs and working groups to deal with particular kinds of violations, for example on the sale of children.[48]

59. The Office of the High Commissioner for Human Rights (OHCHR) has conducted field operations in 22 countries since 1992. In 1996 the General Assembly also authorized the post of Special Rapporteur on the impact of armed conflict on children. Now called the Special Rapporteur for Children and Armed Conflict, the mechanism works in cooperation with UNICEF and OHCHR.

60. In 1970 the Economic and Social Council adopted resolution 1503 (XLVIII) authorizing the Commission on Human Rights to receive and review communications alleging the existence of a consistent pattern of gross violations of human rights. In the nearly 30 years of that procedure the Commission has dealt with over 65 country situations.

61. The Sub-Commission on Prevention of Discrimination and Protection of Minorities (renamed the Sub-Commission on the Promotion and Protection of Human Rights in 1999) has, as authorized by the Economic and Social Council and the Commission on Human Rights, established three inter-sessional working groups, on contemporary forms of slavery (1975), indigenous populations (1982) and minorities (1995).

62. Most of the international mechanisms for implementation have been developed since the advent of the treaties which prohibit slavery and slavery-like practices and thus those treaties did not incorporate procedures which are now considered to be indispensable for monitoring compliance with States' human rights obligations.

A. Conventions on slavery

63. Article 7 of the Slavery Convention provides that "the High Contracting Parties undertake to communicate to each other and to the Secretary-General ... any laws and regulations which they may enact with a view to the application of the provisions of the present Convention". [49] There is also a similar obligation to notify the Secretary-General of any measures implemented in national law pursuant to the provisions of the Supplementary Convention (art. 8 (2)). In comparison to the reporting and monitoring mechanisms of other, more recent human rights instruments, the reporting clauses of the Slavery Convention and the Supplementary Convention lack the requisite periodicity and specificity. Most importantly, the slavery treaties do not designate a treaty body to receive and comment upon the reports. They have little effect on the achievement of the States' obligations and contain no effective implementation mechanism for the provisions in these conventions abolishing slavery. The Sub-Commission has noted that this gap is "a clear defect in the arrangements made for the eradication of slavery and the slave trade and similar institutions and practices". [50]

64. Under the Slavery Convention and the Supplementary Convention, States parties agree, but are not obliged to send information on measures implemented in accordance with the conventions on slavery to the Secretary-General who in turn communicates such information to the Economic and Social Council for discussion "with a view to making further recommendations for the abolition of slavery". [51] The Economic and Social Council has not pursued this role actively. Instead, it established the Working Group on Slavery, which later became the Working Group on Contemporary Forms of Slavery under the aegis of the Sub-Commission, to review developments in the field of slavery based on all available information.

B. ILO mechanisms

65. The ILO has since its inception sought to establish a monitoring method that is acceptable to all States parties. The ILO process is widely regarded as one of the most effective systems of supervision, and many of the existing reporting procedures under other human rights treaties "owe much to the long experience of reporting under various conventions adopted by the ILO". [52] The principal ILO system for the application of international labour standards is based on reports received from Governments and is exercised by the Committee of Experts on the Application of Conventions and Recommendations. Article 22 of the ILO Constitution requires that all States report periodically on the conventions to which they are a party.

66. This mechanism starts with the submission of reports by Governments. Originally, reports were to be submitted every year on all ratified conventions. That system has since been revised on a number of occasions in view of the increasing number of conventions and members of the ILO. The periodicity of reporting now gives priority to the more important conventions, such as those dealing with fundamental human rights, on which detailed reports must be submitted every second year; reports on other conventions must be submitted every five years. The ILO Governing Body has decided that reports were no longer necessary for certain conventions which they determined had lost their relevance over time.

67. The reports are carefully reviewed by the staff of the ILO which prepares draft comments for the Committee of Experts, a body of distinguished individuals from different countries which meets once a year. The reports and the draft comments are then examined by the Committee of Experts, which makes juridical assessments in closed sessions. Although the Committee uses the reports submitted by Governments as a starting point, it also looks at other available official or reliable data, such as information gathered in the course of ILO direct contact missions, reports of United Nations bodies and other international agencies, as well as submissions from employers' and workers' organizations. These additional sources of information can be important to establish whether the conventions are implemented in practice.

68. The Committee of Experts reports annually to the Conference Committee on the Application of Conventions and Recommendations, a tripartite committee of the International Labour Conference.[53] The Conference Committee meets at the annual International Labour Conference to discuss in open sessions some of the more pressing cases referred by the Committee of Experts. The Conference Committee issues a report, adopted in the plenary session of the Conference, which is transmitted to the Governments concerned with specific references being made to what points should be addressed in the next report. Although the views of the Committee of Experts are not binding on the States parties, they do carry a certain amount of authority and in most instances are accepted. They provide a useful source of information on the meaning and application of the obligations in the ILO conventions.[54]

69. The second type of supervision exercised by the ILO involves an investigation into allegations that a State has failed to comply with its obligation under a convention it has ratified. It is a mechanism whereby the ILO can examine and find a general solution in situations arising from claims of non-compliance of a ratified treaty by a State party. Representations may be made under article 24 of the ILO Constitution by any employers' or workers' organization alleging that the State is in breach of its obligation; the procedure cannot be invoked by an individual claiming to be a victim of a violation of an ILO convention. The ILO Governing Body, if it determines that the representation is acceptable, appoints a tripartite committee.[55] The report of the committee, which includes the Government's response to the allegations, is sent to the Governing Body for adoption. If the Government's reply is unacceptable, the Governing Body can decide to publish the presentation and reply by way of sanction. This extraordinary procedure has only been pursued once, all of the other cases have been referred back to the Committee of Experts under the usual supervisory system.

70. This second mechanism can also be invoked under article 26 of the ILO Constitution whereby one State can lodge a complaint that another State has failed to observe the provisions of a ratified treaty. That inter-State complaint mechanism has very rarely been invoked. The Governing Body can also initiate such a procedure and refer a complaint to a Commission of Inquiry.[56] The Commission prepares a report both on issues of fact and law, setting out recommendations on how to rectify the problem. The Government concerned must indicate within a three-month period whether it accepts the Commission's recommendations and, if not, whether it intends to refer the matter to the International Court of Justice. This possibility of appeal has never been used because in most cases the recommendations of the Commission of Inquiry have been accepted.[57] If a Government does not comply with the recommendation in the report, the Governing Body can, under article 33 of the ILO Constitution, recommend to the

International Labour Conference the adoption of "such action as it may deem wise and expedient to secure compliance therewith". That provision has not to date been relied on because the parties involved generally prefer to reach a pragmatic conclusion.[58]

71. The Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the compliance of Myanmar with the forced labour conventions issued a report of its findings and recommendations in 1998. The report clearly sets out "an international labour standard that protects a fundamental human right - the right not to be reduced to a state of slavery or forced labour, whichever form this may take".[59] The Commission of Inquiry confirms that international law prohibits absolutely any recourse to forced or compulsory labour and that any person who "violates this peremptory norm is guilty of a crime".[60] A year after its report was published, the International Labour Conference adopted a resolution condemning the Government of Myanmar for persistent violations of Convention No. 29 and determining that Myanmar would receive no development funds from the ILO and was to be suspended from ILO meetings, except insofar as either were aimed at securing compliance with the recommendations on ending forced labour.

ILO Declaration on Fundamental Principles and Rights at Work

72. At its 86th Session in 1998 the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work. The aim of the Declaration was to establish a list of rules that will apply globally even if the relevant conventions had not yet been ratified by the States parties.

73. Of particular importance for the monitoring and elimination of forced labour is the provision in paragraph 2 of the Declaration which imposes on

> "all Members, even if they have not ratified the Conventions in question ... an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize ... the principles concerning the fundamental rights which are the subject of those Conventions, namely:
>
> "(a) Freedom of association and the effective recognition of the right to collective bargaining;
>
> "(b) The elimination of forms of forced or compulsory labour;
>
> "(c) The effective abolition of child labour;
>
> "(d) The elimination of discrimination in respect of employment and occupation."

74. The follow-up to the Declaration provides for two new monitoring mechanisms to be implemented. The first process will involve the Governing Body in receiving information from Governments which have not ratified one or more of the fundamental conventions on any changes which may have taken place in their law and practice. The second procedure is the submission of global reports to the International Labour Conference. These reports will provide

a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period. It is expected they will also serve as a basis for assessing the effectiveness of the assistance provided by the ILO and for determining priorities for technical assistance in the following period. It is anticipated that these new reporting mechanisms will strengthen the ILO's capacity to promote and protect fundamental human rights, in particular through the elimination of forced labour.

C. Working Group on Contemporary Forms of Slavery

75. The mandate of the Working Group is to monitor the existence of "slavery and the slave trade in all their practices and manifestations".[61] The Working Group operates with a large degree of flexibility and receives information from Member States and non-governmental organizations (NGOs) relating to slavery, servitude, forced labour and other slavery-like practices. Although the conventions on slavery provide for States parties to submit reports to the United Nations, the Working Group has developed a practice of receiving information from whichever Governments may wish to present information. Normally, at each session the Working Group receives information from NGOs and then promptly informs the relevant Governments that they have been mentioned and may wish to submit further information. Since the Governments are rarely given more than a couple of days' notice, their responses are often spontaneous and they often offer to submit further information when it can be obtained.

76. The Suppression of Traffic Convention also imposes an obligation on States parties to submit annual reports to the Secretary-General of the United Nations setting out information on "such laws and regulations as may be promulgated, relating to subjects of the present Convention, as well as all measures taken by them concerning the application of the convention" (art. 21). The reporting requirement is seen as an important mechanism to encourage and monitor State compliance with international norms and the lack of any regulatory system relating to slavery and trafficking is a clear limitation. The United Nations is aware of this lacuna and it has been suggested that States parties' reports submitted under the Convention on the Elimination of All Forms of Discrimination against Women should include information on measures adopted to suppress trafficking[62] which is prohibited under article 6 of that convention. Similarly, the lack of a specialized monitoring body was noted by the Secretary-General in his 1966 report on traffic in women and girls wherein he suggested that "it may be opportune to consider the possibility of revising the treaty with a view to making it more effective in terms of both increasing the numbers of States parties and the creation of a regular reporting and monitoring mechanism".[63]

77. At the end of each of its annual sessional reports the Working Group submits a set of general recommendations for further action to its parent body, the United Nations Sub-Commission on the Promotion and Protection of Human Rights. The Sub-Commission usually supports these recommendations and submits any new proposals to the Commission on Human Rights for authorization and approval. (This cumbersome procedure can take a long time, however, and rarely mentions specific situations.[64]) A draft Programme of Action for the Elimination of Child Labour proposed by the Working Group in 1992 in this manner was adopted by the Commission on Human Rights in its resolution 1993/79. The Working Group had considered the problem of trafficking of persons at its twentieth session in informal discussions on information received from various organizations such as the ILO and the Action

for Children Campaign. After examining the problems raised by the menace of trafficking, the Working Group proposed the Programme of Action for the Prevention of Traffic in Persons and the Exploitation of the Prostitution of Others (E/CN.4/Sub.2/1995/28/Add.1). The programme contains suggestions on measures to be implemented by national authorities relating to law enforcement, rehabilitation, reintegration, and education. This recommendation of the Working Group was adopted by the Commission, albeit with significant reservations, in its resolution 1996/61.

78. The Working Group, therefore, has emerged as an informal forum within which States and NGOs can discuss issues of slavery or related practices but it has not developed effective procedures to follow up conclusions reached and recommendations adopted. The Working Group has interpreted its mandate in an expansive manner and has been creative in its interpretation of what constitutes slavery to cover a wide range of issues, for example problems concerning the rights of women, children and migrant workers. In order to be an effective forum for combating slavery the Working Group must be careful not to become embroiled in the consideration of issues that are relatively tangential to slavery as there are limits to the range of matters that can legitimately be brought under the existing definition of slavery in international law.

79. It should also be noted that no international body has been explicitly recognized as competent to receive and consider claims on the part of one State that another State is not fulfilling its obligations under the conventions on slavery. That gap may not be too serious since inter-State complaints mechanisms in other human rights treaties have rarely been used. In addition, it should be noted that no international body has been explicitly recognized as competent to receive and consider communications from individuals who claim to be victims of slavery. Nonetheless, the Working Group has received information about such violations and has informally sought responses from the Governments concerned. More importantly, the lack of a mandatory reporting requirement and a review mechanism has hindered the efficacy of the Working Group in applying the provisions of the conventions on slavery.

80. The only treaty mechanism that does exist under the present treaty-based regime is the jurisdiction given to the International Court of Justice to resolve any dispute that may arise concerning the interpretation or the application of the Slavery Convention (art. 8) or the Supplementary Convention (art. 10). In contrast, the more recent conventions such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women provide for specific institutions to be established to monitor the terms of those conventions. No such body exists in respect of slavery.

81. This clear defect in the existing regime under the conventions on slavery has been discussed many times but no change has been effected, although numerous suggestions on how to improve the system have been made. The six treaty monitoring mechanisms are generally regarded as far more effective in their respective domains than the Working Group on Contemporary Forms of Slavery. Hence, one option would be for the Working Group to seek authorization from the Commission on Human Rights to be recognized as the treaty monitoring body for the slavery-related conventions. That option would have the advantage of encouraging the Working Group to structure its work and to rely upon the procedural precedents of the treaty monitoring bodies.

82. It is difficult to assess whether the Working Group, given its current status, would be in a position to receive and review periodic reports from States. The Working Group receives "very limited substantive assistance in its work from the secretariat"[65] so that even if it wanted to carry out a systematic review of reports submitted under the Slavery Convention, the Supplementary Convention and the Suppression of Traffic Convention, it would not have sufficient resources to be effective.

83. States parties are already required to report upon their implementation of the prohibition of slavery and forced labour under article 8 of the International Covenant on Civil and Political Rights, as well as on the right of everyone to gain a living by freely accepted work for which fair wages are provided under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. Although neither the Human Rights Committee nor the Committee on Economic, Social and Cultural Rights has emphasized contemporary forms of slavery in its review of States parties' reports, it is uncertain whether Governments - already overburdened by their reporting responsibilities to the six existing treaty bodies - would be anxious to develop a comprehensive reporting process for the Working Group to monitor compliance with the slavery-related conventions.

84. Another option would be for the Working Group to build upon its approach of the past three years by continuing to focus on particular issues, for example, domestic workers, trafficking in persons, debt bondage, etc. At its 1998 session the Working Group identified trafficking for prostitution as the principal focus of its 1999 session and debt bondage as the principal focus for its session in the year 2000. At its 1999 session the Working Group was requested to select a sample of three to five States which would be expected to possess useful information about the theme to be discussed, so that the Governments could be informally invited to participate at the session the following year. Those Governments could be invited to submit written reports. Hence, each session of the Working Group would be divided into two parts - a more formal segment in which it would receive information from Governments and NGOs about the theme of that year, e.g. trafficking in persons. The second part of the session would be informal and at least partially without observers. During the second, informal part, the Working Group could (a) consider whether it could draw any conclusions from the information it had just heard about the theme of that year; (b) discuss what topic should be selected for the next and future years, and (c) hold consultations which would permit it to select a few countries which could be invited to participate at the following year's session of the Working Group.

85. Under this approach, Governments, in general, would be far less burdened than they would be by a comprehensive reporting process affecting all States parties. Instead of establishing a State reporting responsibility which would burden all States, only a few Governments would be asked to participate actively in the Working Group's session in a particular year. The Working Group would be expected to vary the countries invited to participate from year to year as the theme of the session would change every year or two. Also, Governments would generally be given much better information about the issues that might arise at a particular session than they receive at present. At its 1999 session, however, the Working Group refused to accept the option of focusing on particular countries, which would have substantially professionalized its activities, but it did identify a theme for its session for the year 2001, that is, trafficking in persons.

86. The Working Group could also seek a mandate in order formally to receive, consider and gather information about communications from individuals who claim to be victims of slavery or from others working on their behalf, as well as to establish a mechanism to consider and act on such communications between sessions. The mandate to take up urgent cases would allow the Working Group to be more effective in preventing and challenging human rights abuses relating to slavery. The Working Group could also seek a mandate to visit countries in order to gather information about compliance with international norms relating to slavery or individual cases which have been reported to the Working Group. After the issue was initially raised at the Working Group, a member of the Working Group undertook such a visit to Mauritania, in his capacity as a Sub-Commission expert, in the early 1980s. Nonetheless, in the late 1990s the Working Group declined an invitation from the Government of the Sudan to send a delegation to investigate slavery in the Sudan on the grounds that they had no mandate to do so.

87. A third option was suggested by the Bureau of the fifty-fourth session of the Commission on Human Rights in its report submitted pursuant to Commission decision 1998/112. Its proposal was to "terminate the mandate of the Sub-Commission's Working Group on Contemporary Forms of Slavery and transfer those responsibilities which are not addressed by existing mechanisms to a new Special Rapporteur on contemporary forms of slavery" (E/CN.4/1999/104, para. 20). This proposal may reflect the view of the Bureau of the Commission's fifty-fourth session, and at least some members of the Commission, that the Working Group on Contemporary Forms of Slavery has not been effective in achieving its objectives. The Bureau believed that a special rapporteur would afford a far less cumbersome, less expensive and more flexible way of focusing world attention on the issue of slavery. A special rapporteur would, however, be less effective than the Working Group could be in monitoring the implementation of the slavery-related conventions, but the Working Group should be encouraged to improve its procedures, as suggested above, for example.

88. The proposals of the Bureau of the Commission's fifty-fourth session were referred by the Commission's fifty-fifth session to the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission to continue the comprehensive examination of the Bureau's report and to report to the fifty-sixth session of the Commission in 2000. In her statement, made on behalf of the Commission at the conclusion of its fifty-fifth session, the Chairperson observed, with respect to the Sub-Commission, that, "[w]hile fully valuing the distinctive role and contribution of the Sub-Commission over its more than 50-year history, the Commission considers that it too is in need of thorough review (E/1999/23-E/CN.4/1999/167, para. 552). The open-ended Working Group of the Commission considered, but did not adopt the proposal for a Special Rapporteur on contemporary forms of slavery, but decided to recommend that the sessions of the Working Group on Contemporary Forms of Slavery be reduced from eight to five days. That recommendation, along with the others contained in the report of the Working Group (E/CN.4/2000/112), was adopted by the Commission at its fifty-sixth session (decision 2000/109 of 26 April 2000).

IV. CONCLUSIONS AND RECOMMENDATIONS

89. The true effectiveness of a treaty can be assessed by the extent to which the States parties apply its provisions at the national level. The implementation of treaties generally refers to both the national measures adopted by States and international measures and procedures adopted to

review or monitor those national actions. There is no such international mechanism for the monitoring and enforcement of States' obligations to abolish slavery and related practices. The right of all individuals to be free from slavery is a basic human right; yet this lack of an adequate implementation procedure does little to encourage Member States to establish safeguards against all contemporary forms of slavery. The mandate of the Working Group on Contemporary Forms of Slavery could be extended to incorporate such a function to provide for a systematic review procedure. Alternatively, the Working Group could improve its own procedures to focus on thematic issues relevant to the prevention of slavery. Another option would be for the Commission to revive its previous proposal that the Working Group be transformed into a special rapporteur of the Commission on Human Rights. Whatever mechanism the Commission and Sub-Commission might choose to improve the implementation of the many treaties against slavery, this updated review of the international law against slavery should be published in order to continue the work of the Sub-Commission's previous studies[66] and as a means to further understanding of the long-standing struggle to abolish slavery and its contemporary manifestations.

Notes

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[2] Michael Dottridge, Director.

[3] Report of the Working Group on Contemporary Forms of Slavery on its twenty-third session, (E/CN.4/Sub.2/1998/14), para. 22.

[4] Mohamed Awad, Report on Slavery (United Nations publication, Sales No. E.67.XIV.2), United Nations, New York, 1966; see also note 22, infra.

[5] Benjamin Whitaker, Slavery: report updating the Report on Slavery submitted to the Sub-Commission in 1966 (United Nations publication, Sales No. E.84.XIV.1), United Nations, New York, 1984.

[6] Universal Declaration of Human Rights, art. 4.

[7] It was held to be part of the jus gentium under Roman law. Alan Watson, "A Slaves Marriage Dowry or Deposit", Journal of Legal History, vol. 12, 1991, p. 132, see also W.W. Buckland, The Roman Law of Slavery, 1908, C.W.W. Greenidge, Slavery, 1958, pp. 15-18, Roger Sawyer, Slavery in the Twentieth Century, 1986, pp. 1-8, see also Kevin Bales and Peter T. Robbins, "No One Shall be Held in Slavery or Servitude: A Critical Analysis of International Slavery Agreements", Human Rights Review (forthcoming).

[8] M. Burton, The Assembly of the League of Nations, 1941, p. 253. According to article 22 of the League of Nations Covenant, "... the Mandatory must be responsible for the administration of the territory under conditions which will guarantee ... the prohibition of abuses such as the slave trade".

[9] M. Cherif Bassiouni, "Enslavement as an International Crime", New York University Journal of International Law and Politics, vol. 23, 1991, p. 445, Yearbook of the International Law Commission 1963, vol. II, United Nations publication (Sales No. 63.V.2), United Nations, New York, 1964, pp. 53, 198-199 (the prohibition against slavery is one of the oldest and best-settled rules of jus cogens); Human Rights Committee, General Comment No. 24, Official Records of the General Assembly, Fiftieth session, Supplement No. 40 (A/50/40), annex V, para. 8, see also A. Yasmine Rassam, "Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law", Virginia Journal of International Law, vol. 39, 1999, p. 303.

[10] Barcelona Traction, Light and Power Co, Ltd. (Belgium v. Spain), Judgment of 5 February 1971, I.C.J. Reports, 1970, p. 32.

[11] Renee Colette Redman, "The League of Nations and the Right to be Free from Enslavement: the First Human Right to be Recognized as Customary International Law", Chicago-Kent Law Review, vol. 70, 1994, pp. 759, 780.

[12] Bassiouni, supra note 9, p. 448.

[13] Report of the Temporary Slavery Commission to the Council of the League of Nations (A.17.1924.VI.B), 1924, quoted in The suppression of slavery: Memorandum submitted by the Secretary-General to the Ad Hoc Committee on Slavery, 1951, para. 22.

[14] Ibid., para. 80. The report to the Sixth Committee of the League of Nations Assembly in 1926 also clarified, in relation to article 2 (b) of the final text of the Slavery Convention, that the words "notably in the case of domestic slavery and similar conditions" were being omitted on the grounds that "such conditions come within the definition of slavery contained in the first article and that no further prohibition of them in express terms was necessary. This provision applies not only to domestic slavery but to all those conditions mentioned by the Temporary Slavery Commission ... i.e. debt slavery, the enslaving of persons disguised as adoption of children and the acquisition of girls by purchase disguised as payment of dowry".

[15] V. Nanda and C. Bassiouni, "Slavery and the Slave Trade: Steps Toward Eradication", Santa Clara Lawyer, vol. 12, 1971, pp. 424, 430.

[16] For details of conventions dealing with traffic in persons and exploitation of prostitution, see sections on Trafficking and Prostitution, infra.

[17] Report of the Ad Hoc Committee of Experts on Slavery (E/AC 33/13), 1951, p. 13.

[18] Mohamed Awad, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of apartheid and colonialism" (E/CN 4/Sub 2/322), 1971, para. 12.

[19] The term "servitude" is not used in the Supplementary Convention, which refers instead to "institutions and practices similar to slavery" and "persons of servile status".

[20] See, e g. United Nations document E/CN 4/Sub 2/1982/20 (defining "slavery" in paragraph 9 as "any form of dealing with human beings leading to the forced exploitation of their labour"), Rome Statute of the International Criminal Court (A/CONF 183/9) (1998) (defining, in article 7 (2) (c), "enslavement" as "the exercise of any or all of the powers attaching to the right of ownership over a person ... includ[ing] the exercise of such power in the course of trafficking in persons, in particular women and children". This definition is essentially the same as the original definition adopted by the League of Nations over 60 years ago, adding only a specific reference to trafficking).

[21] The question of whether economic imperatives constitute a form of "force" is often debated, particularly in relation to traffic in women and exploitation of prostitution. For a discussion of this debate see section on Forced Prostitution, infra.

[22] Rights guaranteed respectively by article 10 and article 7 of the International Covenant on Civil and Political Rights. On a number of occasions, victims of slavery have "disappeared" while being trafficked or held in slavery. The enforced or involuntary disappearance of victims of slavery has been facilitated by the secrecy in which victims of slavery are often kept: being prevented from communicating with others, sometimes because of their isolation, for example on large agricultural estates, and sometimes because of their virtual imprisonment. See, e g. recommendation on the question of disappearances linked to contemporary forms of slavery, in Report of the Working Group on Contemporary Forms of Slavery on its seventeenth session (E/CN 4/Sub 2/1992/34), 1992, p. 27.

[23] See, e g. International Covenant on Civil and Political Rights, art. 7.

[24] Ibid., arts. 14 and 16.

[25] Ibid., art. 18 (2). "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or beliefs of his choice".

[26] Ibid., art. 23.

[27] Report of the Working Group on Contemporary Forms of Slavery on its eighteenth session (E/CN 4/Sub 2/1993/30), para. 43.

[28] See report of the Working Group on Contemporary Forms of Slavery on its fifth session (E/CN.4/Sub.2/434), (1979), paras. 10-16.

[29] See section on Debt bondage, infra.

[30] See the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted on 18 June 1998 by the International Labour Conference at its 86th Session.

[31] The ILO Forced Labour Convention, 1930 is the most widely ratified ILO convention with 139 States parties.

[32] X v. Federal Republic of Germany, Application No. 4653/70, European Commission on Human Rights, Decisions and Reports, vol. 46, 1974, p. 22.

[33] Convention No. 117, which entered into force on 23 April 1964, has been ratified by only 32 States.

[34] Convention No. 131, which entered into force on 29 April 1972, has been ratified by only 41 States.

[35] Several previous conventions had a similar objective. ILO Convention No. 26 and Recommendation No. 30 (applicable to trades) and Convention No. 99 and Recommendation No. 89 (applicable to agriculture) stipulated that the minimum wage should not be fixed at a lower rate than one which would ensure the subsistence of the worker and his or her family.

[36] Convention No. 95, which entered into force on 24 September 1952, has been ratified by 94 States.

[37] The range of abuses was described in detail by the Sub-Commission's Special Rapporteur on exploitation of labour through illicit and clandestine trafficking, Halima Embarek Warzai, appointed in 1973. Her final report was issued as a United Nations publication in 1986 (Sales No. E.86XIV.1).

[38] In addition to the International Agreement for the Suppression of the White Slave Trade of 1904, these treaties include the International Convention for the Suppression of the White Slave Traffic of 4 May 1910, the International Convention for the Suppression of the Traffic in Women and Children of 30 September 1921, and the International Convention for the Suppression of the Traffic in Women of Full Age of 11 October 1933. A further draft convention was prepared by the League of Nations in 1937, but was not adopted.

[39] General Assembly resolution 48/104 of 20 December 1993.

[40] Report of the Working Group on Contemporary Forms of Slavery on its twenty-third session (E/CN.4/Sub.2/1998/14), recommendations 3 and 4.

[41] See Rome Statute of the International Criminal Court, supra note 20 (defining slavery and trafficking in persons as crimes against humanity).

[42] See also International Convention for the Suppression of the Traffic of Women of Full Age, art. 1 (similarly banning traffic in women "even with [their] own consent").

[43] Ibid., at preamble (stating that "prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community ...").

[44] See, e.g. Convention on the Elimination of All Forms of Discrimination against Women, art. 6 (requiring States parties to suppress the "exploitation of prostitution of women").

[45] International Covenant on Civil and Political Rights, art. 2. Individuals also have an obligation not to engage in slavery; see, e.g. Rome Statute of the International Criminal Court, supra note 20, art. 7 (c).

[46] See, e.g. International Covenant on Civil and Political Rights, art. 41 (c).

[47] A similar complaint mechanism is being developed for the Committee on Economic, Social and Cultural Rights. It should be noted that no individual communications are known to have related to contemporary forms of slavery.

[48] In general, these thematic mechanisms have the capacity to receive information from individuals, to make direct appeals to Governments, to visit countries, and ultimately to seek an end to specific violations. Their prompt action and capacity to act in regard to all countries - regardless of whether the country has ratified a specific treaty - make the thematic procedures one of the most effective human rights tools in the United Nations system - helping to save lives, to stop torture, to find disappeared people, and otherwise to protect individuals. The rapporteurs provide comprehensive reports each year to the Commission.

[49] In 1953, by resolution 794 (VIII) of 23 October 1954, the General Assembly approved the Protocol amending the Slavery Convention to bring it within the United Nations system.

[50] Awad, supra note 18, para. 163.

[51] Supplementary Convention, art. 8 (3).

[52] Martin Scheinin, "International Mechanisms and Procedures for Implementation", in An Introduction to the International Protection of Human Rights, Raija Hanski and Markku Suksi (eds.), 1997, p. 56; see also E. A. Landy, The Effectiveness of International Supervision: Thirty Years of ILO Experience, 1966.

[53] Both Committees derive their authority from decisions of the International Labour Conference and the ILO Governing Body. See N. Valticos and G. von Potobsky, International Labour Law, 1994, pp. 239-245.

[54] There is a mechanism under article 37 of the ILO Constitution which provides that any dispute relating to the interpretation of a provision of a convention can be referred to the International Court of Justice. Although this is the only forum that has jurisdiction to give definitive interpretations, this procedure has been used on only one occasion, in 1932.

[55] Standing Orders concerning the Procedure for the Examination of Representations under Articles 24 and 25 of the Constitution of the ILO, ILO Official Bulletin, vol. 64, Series A, No. 1, 1981, p. 93.

[56] International Labour Office, Impact of International Labour Conventions and Recommendations, 1976, p.68 ; see also Klaus Samson, "The Standard-Setting and Supervisory System of the ILO", in An Introduction to the International Protection of Human Rights, supra note 52, p. 170.

[57] Ibid.

[58] Samson, supra note 56, p. 170.

[59] Patrick Bolle, "Supervising Labour Standards and Human Rights: The Case of Forced Labour in Myanmar (Burma)", International Labour Review, vol. 137, 1998, p. 391.

[60] Report of the Commission of Inquiry Appointed under Article 26 to Examine the Observance of Myanmar of the Forced Labour Convention, 1930 (No. 29), 1998, p. 66.

[61] Economic and Social Council decision 16 (LVI) of 17 May 1974.

[62] See Traffic in women and girls: report of the Secretary-General (A/51/309), (1966).

[63] Ibid., para. 56.

[64] Kathryn Zoglin, "United Nations Action Against Slavery: A Critical Evaluation", Human Rights Quarterly, vol. 8, 1986, pp. 306, 329.

[65] Ibid., p. 339.

[66] See Awad, supra note 4; Whitaker, supra note 5.

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CONTEMPORARY FORMS OF SLAVERY

Updated review of the implementation of and follow-up to the conventions on slavery

Addendum

Forms of slavery

GE.00-13857 (E)

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Introduction

1. The present addendum provides a more comprehensive discussion of the various forms of slavery as summarized in section II of the updated review (E/CN.4/Sub.2/2000/3).

I. SERFDOM

2. In the updated review, serfdom was defined, according to the Supplementary Convention of 1956, as "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status". The updated review further stated the conclusion of the Working Group on Contemporary Forms of Slavery that existing land tenure regimes "can in certain circumstances be seen as oppressive power relationships arising from ownership or use of land and disposition of its products to create forms of servitude and bondage".

3. Serfdom has been categorized as a form of slavery since the first discussions preceding the adoption of the Slavery Convention of 1926. In its final report to the League of Nations, the Temporary Slavery Commission regarded serfdom as the equivalent of "predial slavery", that is, the use of slaves on farms or plantations for agricultural production.[1] The requirement contained in article 2 (2) of the Slavery Convention of 1926, "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms", consequently applies to serfdom as well as slavery.

4. The Temporary Slavery Commission also noted in a 1924 report that many people were found in "agricultural debt bondage" which combined elements of both debt bondage and serfdom.[2] That conclusion was confirmed by later investigations of the International Labour Organization (ILO) into the status and conditions of indigenous labour in Latin America during the 1940s.[3]

5. Records of discussions which occurred both in the United Nations and ILO before the adoption of the Supplementary Convention in 1956 indicate that the term "serfdom" was intended to apply to a range of practices reported in Latin American countries and more generally referred to as "peonage".[4] Those practices, which had developed in a context of conquest, subjugation of indigenous peoples and seizure of their lands, involved a landowner granting a piece of land to an individual "serf" or "peon" in return for specific services, including (i) providing the landowner with a proportion of the crop at harvest ("share cropping"), (ii) working for the landowner, or (iii) doing other work, for example domestic chores, for the landowner's household. In each case, it is not the provision of labour in return for access to land which is in itself considered a form of servitude, but the inability of the person of serf status to leave that status. The term "serfdom" and its prohibition in the Supplementary Convention appear applicable to a range of practices which still occur today but are rarely recognized or described in the countries concerned as "serfdom," as the term is associated by many with the political and economic order of medieval Europe.[5]

6. In some cases the status of "serf" is hereditary, affecting entire families on a permanent basis, while in others it is linked to and reinforced by debt bondage; in the latter case those affected are obliged to continue working for their landowner on account of debts they supposedly owe, as well as on account of their tenant status.

II. FORCED LABOUR

7. The updated review listed the four basic tenets followed by the ILO in adopting its 182 international conventions and its 1998 Declaration on Fundamental Principles and Rights at Work, namely (i) the elimination of forced labour; (ii) the freedom of association, including the right to form and join a trade union; (iii) the effective abolition of child labour; and (iv) the ending of discrimination in employment.[6] It defined forced labour, according to the ILO Forced Labour Convention, 1930 (No. 29) as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" and emphasized that it was the severe restriction on the individual's freedom that categorized forced labour as a form of slavery. The updated review described how the Abolition of Forced Labour Convention, 1957 (No. 105) obliged States parties to suppress the use of forced labour for political purposes, for purposes of economic development, as a means of labour discipline, as a punishment for strike action and as a means of discrimination. Further, the updated review listed as exceptions to the ILO forced labour conventions work or service constituting normal civil obligations in a fully autonomous country, including compulsory military service, work provided during emergencies and minor communal service.

A. Forced labour conventions

8. The Slavery Convention of 1926, in its article 5, allowed forced labour, but specified that it may only be exacted for public purposes, that it should be regulated by the competent central authorities of the territory concerned, and that "as long as forced or compulsory labour exists ... [it] shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence".

9. ILO Convention No. 29 obliges States parties to "suppress the use of forced or compulsory labour within the shortest possible time" (art. 1; emphasis added). The lack of an absolute prohibition, along with the existence of such an ambiguous time-frame for eradicating forced labour, may be explained by the fact that it was still routine for colonial authorities to rely on forced labour for public works. The ILO has recently noted, however, that a country may no longer rely on this ambiguity to justify inadequate national protections against forced labour.[7]

10. In a joint report issued in 1955, the United Nations Secretary-General and the Director-General of the ILO concluded that, despite the prohibitions of ILO Convention No. 29, forced labour was not being eradicated, and "new systems of forced labour for economic purposes or as a means of political coercion ... raise[d] new problems and call[ed] for action at the international level".[8] The 1956 Supplementary Convention provided for the abolition of practices which could "lead to forms of forced labour",[9] it was believed, however, that the international protections against forced labour were inadequate and that it was necessary to adopt another convention to strengthen the prohibition against compulsory labour.

11. Finding that the use of forced labour as a means of political coercion violated articles 2, 9, 10, 11 and 19 of the Universal Declaration of Human Rights, the ILO created the Abolition of Forced Labour Convention, 1957 (No. 105). The ILO forced labour conventions apply to work or service exacted by Governments or public authorities, as well as to forced labour exacted by private bodies and individuals, including slavery, bonded labour and certain forms of child labour.[10]

B. International Bill of Human Rights and other relevant human rights instruments

12. The ILO forced labour conventions are essentially the only international instruments that set out a definition of forced labour, although its prohibition is endorsed by many treaties, both international and regional. The International Bill of Human Rights contains various provisions relevant to forced labour. The Universal Declaration of Human Rights in article 4 does not specifically refer to forced labour but it is clear from discussions at the time it was drafted that forced labour was regarded as a form of servitude.[11] The International Covenant on Civil and Political Rights provides in article 8 (3) (a) that "[n]o one shall be required to perform forced or compulsory labour", subject to certain specified exceptions concerning prisoners, military service, emergencies and normal civil obligations.

13. Regional agreements also address forced labour. The European Convention for the Protection of Human Rights and Fundamental Freedoms, for example, prohibits forced or compulsory labour in article 4 (2).

III. DEBT BONDAGE

14. The updated review defines debt bondage, according to the Supplementary Convention, as the "status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (art. 1 (a)). The updated review discusses the prohibition of debt bondage by the Abolition of Forced Labour Convention, as well as the inclusion of debt bondage within the prohibition of forced labour in ILO Convention No. 29. It also lists several other ILO conventions concerned with the issue of debt bondage.

15. For some 10 years, the ILO Committee of Experts, and more recently the Conference Committee on the Application of Standards, have denounced the practice of debt bondage, in particular relating to children.[12] The ILO has observed that bondage of children generally occurs through a hereditary debt, an occasional debt, or an advance on salary.[13]

16. Although there is no absolute international prohibition on the payment of wages in consideration other than legal tender, the ILO has adopted restrictions to protect workers from abuse. The ILO Convention concerning Basic Aims and Standards of Social Policy, 1962 (No. 117)[14] requires States parties to take "all practicable measures" to prevent debt bondage. Part IV of that convention states that "wages shall normally be paid in legal tender only". The convention stipulates that wages must be paid regularly "at such intervals as will lessen the likelihood of indebtedness among the wage earners".[15] It also places responsibility on a

"competent authority" to ensure that, when food, housing, clothing, or other essential supplies and services are being used to pay the worker, their cash value is fairly assessed.[16] The convention places the responsibility on the States parties to establish mechanisms to monitor and control payments of wages which are made through non-cash transactions, and is intended to ensure that employers do not abuse their dominant position by charging inflated prices for goods provided in lieu of wages. Advances on wages must also be regulated by the competent authority, which should set a maximum limit on the amounts advanced and render any advance exceeding the capped sum "legally irrecoverable".

17. Extremely low wages are a cause of forced labour and debt bondage.[17] The ILO has therefore encouraged national authorities to set minimum wages to prevent the payment of extremely low wages which are insufficient to maintain the workers and their families.[18] The ILO Convention concerning Minimum Wage Fixing with Special Reference to Developing Countries, 1970 (No. 13) and its accompanying Recommendation No. 135 seek to give wage-earners the necessary social protection in terms of minimum permissible levels of wages.[19]

18. Debt bondage or bonded labour still exists today affecting millions of adults and children in their own countries and migrant workers throughout the world. In its most recent convention, the Worst Forms of Child Labour Convention, 1999 (No. 182), the ILO includes debt bondage among the "worst forms" prohibited by article 3 (a).[20]

19. In view of the prevalence of bonded labour among the landless in rural areas, Governments may in some instances be forced to reform the existing land tenure systems in order to prevent debt bondage and thereby comply with their obligations under the Supplementary Convention. In addition to adopting legislation to abolish debt bondage, to extinguish debts which have been incurred and to take preventive action, rehabilitation is a crucial element which Governments must undertake to fulfil their obligations under ILO Conventions Nos. 95 and 117. They must ensure that once bonded workers are freed they must not be drawn back into bonded status by promptly assuming another loan. India and Pakistan[21] both have legislation requiring the respective Governments to make payments to individuals identified as bonded labourers, in an effort to prevent the process of bonded labour from starting again.

IV. EXPLOITATION OF MIGRANT WORKERS

20. While all the existing instruments concerning slavery, servile status and forced labour apply to aliens and migrant workers as well as others, certain mechanisms of exploitation and forms of abuse affect migrant workers in particular and require special remedial action.[22] Both the United Nations and the ILO have adopted conventions to address these problems.[23]

21. Women migrant workers are particularly vulnerable to slavery-like exploitation and forced labour.[24] International instruments dealing with traffic in persons across international frontiers address some of the problems experienced by migrants,[25] but are essentially limited to preventing international recruitment for prostitution. Debt bondage, which affects many migrant workers, is explicitly addressed by the Supplementary Convention of 1956.[26]

22. Employers of migrant workers acquire a significant degree of control over their employees by offering to look after their wages. This practice is usually justified by the employer on the grounds that it will ensure earnings are not lost, or that they are invested to give the employee some extra benefit. Because of the migrant worker's vulnerable position s/he is often unable to refuse an employer's offer or is unaware that it would be prudent to do so. Once the employer has accumulated the equivalent of several months' wages, the employee is at a grave disadvantage if s/he wishes to depart and s/he must consequently put up with a significant level of abuse in an effort to retrieve her/his earnings. Such abuse sometimes involves physical assault and rape. The withholding of wages contravenes ILO Convention No. 95, which requires wages to be paid regularly by employers and prohibits methods of payment that deprive workers of the genuine possibility of terminating their employment. Although international standards on slavery do not specify that withholding wages or failing to pay an employee is a form of slavery, the practice is clearly a violation of basic human rights, notably the guarantee in article 7 (a) of the International Covenant on Economic, Social and Cultural Rights of "remuneration which provides all workers, as a minimum, with ... (i) fair wages and equal remuneration for work of equal value without distinction of any kind".

23. The Working Group on Contemporary Forms of Slavery observed at its April 1995 session that "foreign migrant workers are frequently subject to discriminatory rules and regulations which undermine human dignity".[27] At its June 1996 session the Working Group heard evidence that the confiscation of passports by employers was a significant way of imposing control on migrant workers, and urged States "to take necessary measures to sanction employers for the confiscation of passports belonging to migrant workers, in particular, migrant domestic workers".[28] In a report to the 2000 session of the Commission on Human Rights, the High Commissioner for Human Rights stated: "Governments should enforce the call of the Working Group on Contemporary Forms of Slavery upon employers not to take possession of workers' passports or other key documents ... A vital form of preventive action for all migrants appears to be to ensure that they are not left alone or isolated, i.e. that some freedom of association is respected and that consulates closely monitor their migrant nationals."[29]

V. TRAFFICKING[30]

24. As the main international convention concerned with traffic in persons deals uniquely with traffic for purposes of prostitution, the issues of traffic or trafficking in persons and prostitution are often dealt with together. Since instruments define traffic or trafficking to cover the movement of people for purposes other than prostitution or sexual exploitation, however, the issues of traffic in persons and prostitution are dealt with in separate sections in this addendum. As they are closely linked, the two sections should be read together.

25. There is no precise and globally recognized definition of "trafficking in persons", and ambiguity remains as to whether the term implies cross-border movement and also whether there must be an element of coercion involved.[31] The trafficking of persons today can be viewed as the modern-day equivalent of the slave trade of the last century.[32] The Covenant of the League of Nations adopted on 28 April 1919 called on member States not only to ensure fair and humane conditions of employment for all but also to work towards the suppression of traffic in women and children for the purpose of sexual exploitation.

26. Prior to the existence of the League of Nations certain efforts had been made by the international community to prohibit the slave trade. The Brussels Act of 1890 contained effective measures to control and prevent the slave trade. It provided for a Slavery Bureau to oversee this process and to subject the sea routes preferred by slave traders to naval patrolling. Article XVIII of the Brussels Act provided that a "strict supervision shall be organized by the local authorities at the ports and in the countries adjacent to the coast, with the view of preventing the sale and shipment of slaves ". Today, it is increasingly difficult to monitor and control the traffic in persons given the dramatic increase in global migration. Monitoring and prevention are made even more difficult because of the covert nature of the activities and the threats of violence associated with it, as in some instances organized crime is involved [33]

27. As noted in the updated review, the Slavery Convention in article 1 (2) referred to trafficking, including in its definition of "slave trade" "every act of trade or transport in slaves". The Supplementary Convention later added "by whatever means of transport" (art. 3), thus including transportation by air [34]

28. The international instruments dealing with trafficking which were implemented in the first part of the twe eth century focused on cases in which women and girls were moved across international frontiers without their consent for the purposes of prostitution [35] As noted in the updated review, the International Convention for the Suppression of the White Slave Trade Traffic obligates the parties to punish anyone who recruits a woman below the age of majority into prostitution, with or without her consent. Similarly, the International Convention for the Suppression of the Traffic of Women of Full Age establishes a duty to prohibit, prevent and punish the trafficking of women regardless of the question of consent. This 1933 convention specifically relates to the international traffic in consenting women of full age, but only in situations where there is traffic from one country to another.

29. This trend towards criminalizing the recruiting of women in one country to be prostitutes in another continued after the Second World War with the adoption of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Suppression of Traffic Convention), consolidating earlier instruments relating to traffic in women and children.

30. The Suppression of Traffic Convention prohibits procuring, enticing, or leading away a person for the purposes of prostitution even with the consent of that person (art. 1 (1)). The notion of trafficking was inextricably linked to prostitution as in the earlier conventions, resulting in a narrow interpretation of trafficking as it does not include the procurement of individuals for any other purpose than sexual exploitation. The reality today is that people are trafficked not only for use in the sex industry but for many other reasons. Accordingly, article 35 of the Convention on the Rights of the Child prohibits the abduction, sale, or traffic in children for any reason, for example begging [36]

31. As noted in the updated review, recruitment need not be across international borders to qualify as "trafficking" under article 17 of the Suppression of Traffic Convention, though the parties, in connection with immigration and emigration, are required to check whether the *trafficking involves prostitution*. The States parties are obliged to punish both voluntary and involuntary procurement into prostitution; hence, the consent of the trafficked person is

irrelevant. This approach reflects the view stated in the preamble to establish prostitution as a practice incompatible with the dignity and worth of the human person. The Convention also obligates States parties to take specific measures to protect immigrants and emigrants, the potential victims of trafficking, by providing them with relevant information to ensure that they do not fall victim to traffickers.

32. Article 1 of the Suppression of Traffic Convention requires the woman or man being trafficked to have been recruited "to gratify the passions of another" and "for purposes of prostitution". Because the requirement concerning the intentional character of the offence may create practical difficulties in implementation, "additional instruments should be envisaged to mitigate in certain cases that requirement concerning the subjective aspect of the offence".[37] As early as 1965 the International Criminal Police Organization (INTERPOL) recommended to the United Nations that the Suppression of Traffic Convention "be supplemented so as to cover cases of 'disguised traffic' (engaging persons for employment abroad that exposes them to prostitution)".[38] The suggestion was not, however, followed.

33. The Supplementary Convention also contains provisions regarding the transportation of slaves or persons of servile status from one country to another. Article 3 makes it a criminal offence to be involved in the slave trade and requires the States parties to exchange relevant information in a coordinated effort to combat the slave trade.[39] In addition, article 6 (1) of the Supplementary Convention makes "the act of enslaving another person or of inducing another person" into slavery or servile status a crime. There are various methods of procuring or enticing a person into slavery or servile status for the purposes of prostitution or other forms of exploitation. The primary methods include (i) abduction,[40] (ii) purchase,[41] or (iii) procurement with fraudulent inducements of jobs and a better life.[42]

A. Traffic in persons other than for prostitution

34. The updated review notes that there have been various suggestions since the Suppression of Traffic Convention was adopted in 1949 that the definition of "traffic in persons" should be extended to cover forms of recruitment which are not directly linked to prostitution, and also the movement of men, women, or children across international frontiers for purposes other than prostitution, when they are being subjected to coercion or are being deceived about the nature of the situation which awaits them. A broader definition would include "transporting a person from one place to another in order to subject him or her to the actual and unlawful power of other persons by means of violence or the threat of violence or by abusing a position of authority arising from a relationship or by misleading the other person".[43]

35. In 1994 a United Nations General Assembly resolution offered a de facto definition of trafficking in women and children. In that resolution, 49/166 of 23 December 1994, the Assembly condemned the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption".

36. In its resolution 53/111 of 9 December 1998 the General Assembly established an intergovernmental ad hoc committee for the purpose of elaborating an International Convention against Transnational Organized Crime and discussing the elaboration of international instruments addressing trafficking in women and children and the illegal trafficking in and transporting of migrants, in addition to illegal trafficking in firearms.[44] In addition to the draft Convention, the Ad Hoc Committee has drafted the Protocol against the Smuggling of Migrants By Land, Air and Sea,[45] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[46]

37. The latter protocol would criminalize "trafficking in persons", which in its latest revised article 2 it defines as "the recruitment, transportation, transfer, harbouring or receipt of persons, either by threat or use of abduction, force, fraud, deception or coercion, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person [, with the aim of submitting them or any form of exploitation ...]." The protocol also would require States parties to assist victims of trafficking, including protecting their privacy; providing housing; providing medical, psychological, and legal assistance, and permitting victims to remain in a country. States parties would be required to enact laws allowing victims to obtain compensation for damages suffered. The Protocol on Smuggling of Migrants seeks to eradicate, through international cooperation in the regulation of travel documentation and procedures, "smuggling of migrants" that is, "the procurement of the illegal entry into or illegal residence of a person in [a] [any] State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit ...".

B. Trafficking in women

38. As noted above, the Suppression of Traffic Convention applies to women and men of all ages and is therefore more extensive in scope than earlier treaties which only applied to women and girls. Other treaties focus primarily on the problem of trafficking in women. The updated review notes that the Convention on the Elimination of All Forms of Discrimination against Women includes in its article 6 the obligation that States parties suppress trafficking in women. Various organizations have proposed definitions of "trafficking in women" in an effort to distinguish it from other forms of trafficking.[47] Trafficking has been established as a violation of women's rights. In the Vienna Declaration and Programme of Action adopted at the end of the 1993 World Conference on Human Rights, it was agreed that "[g]ender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudices and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated" (para. I.18).[48] The Working Group on Contemporary Forms of Slavery adopted at its 1998 session a recommendation declaring that "trans-border trafficking of women and girls for sexual exploitation is a contemporary form of slavery and constitutes a serious violation of human rights".[49]

C. Sex tourism

39. The 1983 report of the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others characterized "sex tourism" as a phenomenon similar to trafficking, rather than just an exploitation of prostitution. "More conspicuous, and therefore easier to trace, is the other type of traffic which, instead of transporting the prostitute, temporarily transports the client. This is the channel of the package tours ('sex tours'), in which the services of a prostitute are included in the price the tourist pays for his ticket. This specialized kind of tourism is grafted onto an existing prostitution market and develops it."[50]

40. The Commission Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography adopted by the Commission on Human Rights in its resolution 1992/74 urges that "[s]pecial attention should be given to the problem of sex tourism. Legislative and other measures should be taken to prevent and combat sex tourism, both in the countries from which the customers come and those to which they go. Marketing tourism through enticement of sex with children should be penalized on the same level as procurement" (para. 47).[51]

D. Traffic in children

41. As related in the updated review, the Convention on the Rights of the Child specifically prohibits "the abduction of, the sale of or traffic in children for any purpose or in any form" (art. 35). Hence, the prohibition of trafficking in children is not limited to recruitment for prostitution, but includes a range of situations in which children are taken away from or given away by their families for some form of exploitation, including adoption,[52] recruitment for any form of sexual exploitation, including prostitution and pornography,[53] and recruitment to work.[54]

42. The 1994 Inter-American Convention on International Traffic in Minors, defining the scope of traffic (or trafficking) in children, specifies in article 2 that:

> "(a) 'Minor' means any human being below the age of eighteen.
>
> "(b) 'International traffic in minors means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.
>
> "(c) 'Unlawful purpose' includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.
>
> "(d) 'Unlawful means' includes, among others, kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institutions having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State Party where the minor is located."

43. When children are trafficked across international frontiers, States are obligated to ensure that the true age of the children is ascertained by independent and objective assessment, preferably with the cooperation of the non-governmental sector. If they are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, they should not be treated as illegal migrants by the receiving countries, but should be dealt with humanely as special cases of humanitarian concern. Upon the children's return, the country of origin should treat them with respect and in accordance with international human rights principles, supported by adequate family-based and community-based rehabilitation measures.[55]

44. International conferences have recently focused attention on the eradication of trafficking in children.[56] The seriousness of the problem has also led the Commission on Human Rights to draft an Optional Protocol to the Convention on the Rights of the Child dealing specifically with the sale of children, child prostitution and child pornography, which was approved by the Commission at its fifty-sixth session in March/April 2000 and transmitted, through the Economic and Social Council, to the General Assembly for adoption.

VI. PROSTITUTION

45. Prostitution takes various forms and involves women, children, and also men, and, as noted in the previous section, is very closely related to trafficking. The updated review pointed out that the Suppression of Traffic Convention in article 1 requires States to punish "any person who, to gratify the passions of another ... procures, entices or leads away, for purposes of prostitution, another person ... [or] otherwise exploits the prostitution of another person" - the prohibition referring both to cases in which the prostitute is subjected to some form of coercion, as well as to acts carried out "with the consent of that person".[57] The Convention protects both men and women over the age of 18 practising prostitution. The updated review further noted that no international instrument actually defines prostitution, but it has been generally viewed as any sexual act offered for reward or profit.

46. "Exploitation of prostitution", also clearly considered a form of slavery by international instruments, includes maintaining or knowingly financing a brothel, that is, a place where one or more people are practising as prostitutes, or anyone who "knowingly lets or rents a building or other place ... for the purpose of the prostitution of others".[58]

A. Forced prostitution

47. The three international instruments concerning the traffic of women for prostitution adopted before 1933 address the various forms of coercion, threats and fraud which are used to force women or men into prostitution or to continue practising as prostitutes. For example, the International Convention for the Suppression of the White Slave Traffic of 1910 requires the punishment of "any person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman or a girl of full age for immoral purposes, even when the various acts which together constitute the offence were committed in different countries, shall also be punished" (art. 2; emphasis added).

48. Forced prostitution occurs when a person is prostituted against his/her will, that is, compelled under duress or intimidation to engage in sexual acts in return for money or payment in kind, whether this is passed to others or received by the victim of forced prostitution herself.[59] Some commentators suggest that entering prostitution to earn money because of acute financial need should also be interpreted as "forced" prostitution.[60]

49. Forms of control over prostitutes include "(1) physical abuse; (2) physical control of prostitutes' children; with threats to keep the children as hostages if prostitutes leave; (3) serious threats of physical harm, including murder; (4) keeping prostitutes in a continuous state of poverty and indebtedness; and (5) ensuring that they have no freedom to move outside unaccompanied".[61] It is this element of coercion and lack of free will that clearly makes forced prostitution a contemporary manifestation of slavery as defined in the general international instruments concerned with slavery, as well as the Suppression of Traffic Convention.[62] Illegal immigrants are extremely vulnerable to this form of exploitation or forced labour. Traffickers, or their ultimate employer, often retain the victim's passport in order to blackmail her (or him) and subject her to forced prostitution, in many cases siphoning off the bulk of her (or his) earnings.

50. The General Assembly in 1993 adopted the Declaration on the Elimination of Violence against Women, seeking to eradicate, among other forms of violence against women, "trafficking in women and forced prostitution" (art. 2). There does not appear to be a substantial difference in meaning between "forced" and "enforced" in relation to prostitution. Under the provisions of article 27 of the Fourth Geneva Convention of 1949, "[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". Additional Protocol I prohibits "outrages of personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault" (art. 75 (2) (b)).[63]

51. The Rome Statute of the International Criminal Court includes in its definition of crimes against humanity, committed as part of a widespread or systematic attack against any civilian population, "enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" (art. 7 (1) (g)). In the Rome Statute provisions relating to armed conflict not of an international character indicate that "rape, sexual slavery, enforced prostitution, forced pregnancy ... and any other form of sexual violence also constituting a serious violation of article 3 common to the Four Geneva Conventions" are prohibited as war crimes (art. 8 (2) (e) (vi)). The rules of international humanitarian law clearly establish forced prostitution as an international crime, even though such practices have been used as a means of modern warfare with apparent impunity.[64]

52. In recent years the international community has tended to focus its attention on the punishment of perpetrators of acts of violence against women. The Platform for Action adopted by the Fourth World Conference on Women in Beijing includes a call on Governments to take certain measures whose objectives included "providing better protection of the rights of women and girls and punishing the perpetrators, through both criminal and civil measures" (para. 130 (b)). The Commission on Human Rights has also encouraged the introduction of practical measures by States to implement international protection against prostitution.[65]

B. Children and prostitution

53. While there is continuing debate about whether adult prostitution should be tolerated in some circumstances, the Convention on the Rights of the Child clearly prohibits, in article 34:

(a) All forms of sexual exploitation and sexual abuse;

(b) The inducement or coercion of a child to engage in any unlawful sexual activity;

(c) The exploitative use of children in prostitution or other unlawful sexual practices;

(d) The exploitative use of children in pornographic performances and materials.

The terms "exploitative use of children in prostitution ..." in article 34 (c) was interpreted by some to signify that adults could legitimately pay for sex with children above the age of sexual consent (for example aged 16 or 17), but in no circumstances was it permissible for anyone else to profit from the money earned. In June 1999, however, the Worst Forms of Child Labour Convention, 1999 (No. 182) confirmed that the "use of a child for prostitution" is classified as a "worst form of child labour", and that international standards make it unacceptable for anyone to "use" a child over the age of consent in prostitution (art. 3 (b)). [66] The Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography in 1992 which confirmed that "[t]he trafficking in and sale of children, child prostitution and child pornography constitute modern forms of slavery which are incompatible with human rights ... [and that such practices] cannot be justified by reason of poverty or underdevelopment". [67]

C. Sexual slavery

54. The updated review pointed out that sexual slavery, the sexual exploitation of individuals through the use or threat of force, is related to prostitution, though distinct in that there need not be any "reward or profit".

55. This concept of sexual slavery has been recognized in national courts. For example, in United States v Sanga 967 F.2nd 1332 a man forced a woman to work as a domestic maid for over two years and forced her to have sex with him. The United States Court of Appeals for the 9th Circuit unanimously held that she was a "virtual slave" contrary to the provision of the Thirteenth Amendment to the United States Constitution, which prohibits slavery and involuntary servitude.

56. The use of sexual slavery in any form during times of armed conflict - rape camps, comfort stations, or other forms of sexual abuse - constitutes a grave breach of international humanitarian law. Armed conflict, including occupation of territories, tends to result in increased sexual violence, in particular against women, which requires specific protective and punitive measures.

57. Common article 3 to the four Geneva Conventions prohibits all parties to a conflict from perpetrating "outrages upon personal dignity, in particular humiliating and degrading treatment".

Common article 3 has over time been interpreted to include sexual slavery.[68] Article 147 of the Fourth Geneva Convention, which deals with "grave breaches," includes "torture or inhuman treatment ... wilfully causing great suffering or serious injury to body or health". Additional Protocols I and II contain prohibitions against any form of indecent assault, especially of women and children.

58. Abuse and systematic rape of women have long been used as a means of warfare; yet it is only in more recent international documents that references to "sexual slavery" emerge.[69] The Vienna Declaration and Programme of Action confirms that "all violations of this kind, including in particular murder, systematic rape, sexual slavery and forced pregnancy, require a particularly effective response" (para. II. 38).

VII. FORCED MARRIAGE AND THE SALE OF WIVES

59. Although the most recent instruments dealing with sexual exploitation are applicable to men and women equally, within the context of marriage women are particularly vulnerable. The Temporary Slavery Commission in 1924 included on its list of practices analogous to slavery "[a]cquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs".[70] The Supplementary Convention of 1956 identifies three types of institutions or practices akin to slavery to which women can be subjected in the context of marriage. The Supplementary Convention first prohibits any institution or practice whereby "a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family, or any other person or group" (art. 1 (c) (i)). It is not the payment which is an abuse, but its occurrence in a forced or non-consensual marriage. The second practice prohibited by the Supplementary Convention is that whereby a woman's husband, his family, or his clan, "has the right to transfer her to another person for value received or otherwise" (art. 1 (c) (ii)). The third prohibited practice concerns the inheritance of a widow, on her husband's death, by her husband's brother or another member of her deceased husband's family. This custom, known as "levirate", involves automatic remarriage to a member of the deceased's family.

60. Recognizing the close link between these three forms of servile status and the general practice of forced marriage, the Supplementary Convention requires States parties "to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages" (art. 2).

61. The 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages specifies in article 1(1) that "[n]o marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and other witnesses ...". Article 2 requires States parties to "take legislative action to specify a minimum age for marriage", but does not itself specify any minimum age. The Convention on the Elimination of All Forms of Discrimination against Women stipulates that "[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory" (art. 16 (2)).

Mail-order brides

62. A relatively recent development concerning women available for marriage is the advertising of women for marriage outside their own countries in a variety of media (magazines, videos and the Internet), prompting the description "mail-order brides" and the concern that they may be trafficked. The Committee on the Elimination of Discrimination against Women (CEDAW) has classified such marriages a new form of sexual exploitation.[71]

63. While the marriage of women from one society, country, or continent to men from another cannot by itself be categorized as a form of slavery or servitude, it seems clear that women who leave their families to marry a man in a foreign country which they have not previously visited are vulnerable to a wide range of forms of exploitation prohibited by existing international standards. The involvement of commercial agents in organizing marriages does not in itself appear to be unacceptable, but if the agent makes payments to the bride's parents or others, the arrangement would come close to infringing the prohibition on the sale of women for marriage contained in the Supplementary Convention.

64. Women advertised for marriage are becoming victims of a contemporary form of slavery or of trafficking. Advertisements may portray women as commodities rather than people - in much the same way as they are portrayed in various forms of pornography - and are therefore demeaning to women in general. Almost invariably, women from developing countries advertise themselves to men in industrialized countries, creating a perception that women from developing countries have a secondary or servile status, this view is supplemented by a concern that certain men in industrialized countries deliberately seek out women from abroad who will behave in a more subservient way than women in their own culture. As new brides in countries where they do not have relatives or friends, and where they may not immediately acquire a permanent right of residence, women may be exposed to abuse by their new husbands and either not know where to turn for help or fear deportation if they abandon their new husbands.[72]

VIII. CHILD LABOUR AND CHILD SERVITUDE

65. This section summarizes international standards on child labour before focusing on definitions of child slavery and servile status, which, for lack of any other term in general use, are referred to here as "child servitude". The need to protect children from exploitative practices was formally acknowledged at the international level early in the twentieth century. The League of Nations included the protection of children within the ambit of its work on eliminating slavery and the slave trade. The League of Nations, in the Geneva Declaration of the Rights of the Child of 1924, stated that children must be protected against every form of exploitation.[73]

66. The Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights contain provisions prohibiting slavery, servitude and forced labour in all their forms and acknowledge the special place of children in society. Article 24 of the latter declares that every child has the "right to such measures of protection as are required by his status as a minor". In addition to the general prohibitions on slavery and forced labour, which are applicable to children as well as adults, the Supplementary Convention of 1956 specifically defines a servile status that is restricted to children alone. The International Covenant on

Economic, Social and Cultural Rights echoes the requirement of numerous ILO conventions that States should specify a minimum age below which "the paid employment of children should be prohibited and punishable by law" (art. 10 (3)).

67. Increased awareness in the 1980s and 1990s of the economic exploitation of millions of children around the world has pushed its consideration into the international arena and "to the forefront of a debate within governments, international organizations and the business sector".[74] Limits on child labour have been introduced as it has been universally accepted that children, by virtue of their physical and mental immaturity, need special protection.

A. The ILO and child labour

68. Child labour has been a special concern of the ILO from its inception. The preamble to its Constitution commits the ILO to protecting children as one of the essential elements in the pursuit of social justice and universal peace. The abolition of child labour is therefore one of the four main objectives of the ILO. The Minimum Age (Industry) Convention, 1919 (No. 5) was adopted at the very first session of the International Labour Conference.

69. The efforts of the ILO to prevent child labour can be divided into three stages. During the first stage, lasting from 1919 to 1973, the ILO sought to influence regulations and practice with regard to child labour in member States principally through the adoption of international labour conventions and recommendations especially on the minimum age of admission to employment.[75] Since 1979, and especially since 1983, when child labour was the theme of the Director-General's report to the International Labour Conference, the ILO has given more weight to public-awareness campaigns and the dissemination of information on forms of child labour that must be abolished. The third stage started at the beginning of the 1990s with a very clear emphasis on direct technical assistance to Governments, including action-oriented research to improve understanding of the problem, identify responses, develop a strategy and design programmes.

70. It has proven difficult, on a practical level, to distinguish between those practices that are permissible and those that constitute abusive forms of child labour. The ILO Minimum Age Convention, 1973 (No. 138) and its accompanying Recommendation No. 146 are the principal international instruments dedicated to eradicating child labour in general. They require ratifying States to implement national policies progressively to raise the minimum age for admission to the work force to ensure the fullest physical and mental development of young persons.

71. The Minimum Age Convention applies to all sectors of economic activity and covers children whether or not they are employed for wages. The Minimum Age Convention was introduced to prevent the exploitation of child labour by setting the minimum age for work at not less than the age of completion of compulsory schooling but not less than 15 years (14 years for countries in which the "economy and educational facilities are insufficiently developed").[76] The Convention allows children to do "light work" between the ages of 13 and 15 (12 years in developing countries).[77] The minimum age for "hazardous work" likely to jeopardize the health, safety, or morals of a child is set at 18 years.[78]

72. The Minimum Age Convention has received somewhat fewer ratifications than the other core ILO conventions. Governments have indicated that they were reluctant to ratify because of the technical nature of the Minimum Age Convention. Nonetheless, the Minimum Age Convention provides the only existing comprehensive set of guidelines relating to the appropriate age at which young children can enter the work force.

73. In view of the huge numbers of children employed in contravention of the Minimum Age Convention and in an apparent effort to give a clear signal about which forms of exploitation States should give priority to eliminating, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention, 1999) (No. 182) was adopted by the International Labour Conference in June 1999, together with Recommendation No. 190 on the same subject. In article 3 the Convention defines "the worst forms of child labour" as:

> "(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
>
> "(b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
>
> "(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
>
> "(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".

B. The United Nations and child labour

74. The Slavery Convention did not specifically refer to child slavery as a particular category in its definitions of slavery and the slave trade. It is clear that Governments' attitudes at that time were somewhat ambivalent, and possibly more tolerant, towards child labour than they are today. That approach had changed by the time the Supplementary Convention was being drafted, a specific reference to the exploitation of young persons was included in addition to an explicit prohibition of debt bondage regarding both adults and children.[79]

75. The Supplementary Convention also prohibits "any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour" (art. 1 (d)). That provision was implemented with the particular practice of "sham adoptions" in mind but it does, in fact, cover a wider range of practices involving the exploitation of children.[80]

C. Implementation strategies

76. The Commission on Human Rights in its resolution 1993/79 adopted the Programme of Action for the Elimination of the Exploitation of Child Labour which identifies the following

three forms of child labour as international crimes which violate the international standards against slavery: sale of children and similar practices of (including fake adoption); child pornography, trafficking in child pornography and international trafficking in children for immoral purposes; under-age maidservants in a position of servitude (para. 14). In paragraph 20 the Programme of Action calls for "energetic repressive action" to deal with such cases, and also calls on States to review their legislation "with a view to the absolute prohibition of employment of children" in the following seven sectors:

(a) Employment before the normal age of completion of primary schooling in the country concerned;

(b) Under-age maid service;

(c) Night work;

(d) Work in dangerous or unhealthy conditions;

(e) Activities linked with prostitution, pornography and other forms of sexual trade and exploitation;

(f) Work concerned with trafficking in and production of illicit drugs;

(g) Work involving degrading or cruel treatment.

D. Convention on the Rights of the Child

77. The United Nations Convention on the Rights of the Child contains one of the most explicit and comprehensive set of obligations on States relating to the suppression of the worst forms of child labour. Article 32 of the Convention recognizes the child's right to be protected from economic exploitation and from "performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (art. 32).

78. Articles 34, 35 and 36 of the Convention focus on separate aspects of child exploitation. Article 34 obliges States parties to protect children from "all forms of sexual exploitation and sexual abuse by implementing relevant national, bilateral and multilateral measures". This article can be read in conjunction with the general provision in article 19 of the Convention which protects children from all forms of physical or mental violence.

79. Article 35 provides protection for children from the risk of abduction, sale or trafficking - both abroad and within a country. This provision is more inclusive, and hence more protective, than the Suppression of Traffic Convention as it does not link the trafficking of children to sexual exploitation.[81] Article 35 is also broader than article 34 which relates solely to child pornography and prostitution. Also relevant is article 11 of the Convention which provides that States parties must "combat the illicit transfer and non-return of children abroad". Article 21 regulates the system of international adoptions and provides that it must not result in improper

financial gain. Article 36 provides an even broader, albeit less specific safeguard, requiring States parties to "protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare".

80. The Committee on the Rights of the Child established under the Convention on the Rights of the Child to monitor States parties' compliance with its provisions has made recommendations on how to achieve the elimination of child slavery. The Committee has focused on freedom for children from economic exploitation and discrimination, along with their rights to adequate family support and education.[82] The Committee has identified compulsory education as an important factor in eliminating child labour and has coordinated its mandate with the work of the ILO and UNICEF's Programme for Children in Especially Difficult Circumstances.

81. The Committee has supported the Commission on Human Rights which has drafted an Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography stipulating the basic measures required for preventing and eradicating those serious problems.[83] A second Optional Protocol to the Convention on the Rights of the Child has been drafted in regard to the involvement of children in armed conflicts. This draft Optional Protocol will ensure that children are not forced to enlist and participate actively in any armed conflict.[84] In article 38 the Convention presently provides that "[i]n recruiting among those who have attained the age of 15 years but who have not attained the age of 18 years, States parties shall endeavour to give priority to those who are oldest".

82. Article 3 (a) of ILO Convention No. 182 bans "forced or compulsory recruitment of children for use in armed conflict".[85] This provision appears to allow parties to hostilities to allow children aged 15, 16 and 17 to enter the armed forces on a voluntary basis, but to prohibit conscription if those under 18 are likely to be mobilized to fight.

83. Some States accept volunteers from 16 years upwards and resist increasing the minimum age of recruitment into the armed forces to 18. This view is reflected in the Rome Statute establishing the International Criminal Court where there are provisions making it a crime, in both international and internal armed conflicts, to conscript or enlist "children under the age of 15 years into the national armed forces or using them to participate actively in hostilities".[86] The new draft Optional Protocol to the Convention on the Rights of the Child improves the protection of children from recruitment to participate in armed conflict.[87]

X. OTHER ISSUES

84. The updated review pointed out that the Working Group on Contemporary Forms of Slavery has looked at the issues of apartheid, colonialism, trafficking in human organs and incest. After it was established in 1974 the Working Group on Slavery observed that apartheid and colonialism were also slavery-like practices, but concluded that it was not the right forum to consider them.

A. Apartheid and colonialism

85. By the time the Working Group on Slavery was established in 1974 the question of "slavery in all its forms" was already held to include "the slavery-like practices of apartheid and colonialism". At the first session of the Working Group, in 1975, consideration was given to apartheid and colonialism, and it was noted that various other bodies existed within the United Nations dealing with similar subjects such as the Committee on Apartheid and the Ad Hoc Working Group of Experts on Southern Africa. The Working Group on Slavery observed that "the lack of a comprehensive and detailed study on the relationship between apartheid, colonialism and slavery was deemed as rendering difficult the task of the Working Group of reviewing the slavery-like practices of apartheid and colonialism". [88]

86. At subsequent sessions the Working Group reviewed information about apartheid and received information about situations of colonialism. In 1983, for example, the Working Group noted in its conclusions and recommendations that it "recognizes that apartheid is a slavery-like practice and a collective form of slavery" and suggested that it should be renamed the "Working Group against Slavery, Apartheid, Gross Human Exploitations and Human Degradation". [89] That proposal was not accepted.

87. The most recent recommendation by the Working Group on the issue of the "[s]lavery-like practices of apartheid and colonialism" was issued in 1992, when it referred to earlier recommendations to focus attention on the situation of vulnerable groups, particularly women and children, and decided to devote "attention to ways and means to assist victims of apartheid in order to mitigate its consequences". [90]

B. Trafficking in human organs

88. There are some references to trafficking in human organs in various reports prepared for submission to the Commission on Human Rights but no survey of this practice has been compiled concerning the world as a whole. [91] The World Health Assembly has adopted guidelines which establish international standards in relation to organ transplants and the possibility of commercial trafficking. [92] The guidelines prohibit trafficking in human organs for commercial gain.

89. In 1991 the Working Group on Contemporary Forms of Slavery expressed concern at information "alleging that children are victims of, or are even killed for, the removal of organs for the purpose of commercial transplants". [93] The Working Group later noted that "specific proof of incidents involving and of the extent of this phenomenon is difficult to obtain", and requested the Secretary-General to invite United Nations agencies and others "to pursue their investigation" into allegations of this practice. [94]

90. In 1996 the Commission on Human Rights called on the Secretary-General to examine, in cooperation with relevant United Nations agencies, particularly WHO, as well as INTERPOL, "the reliability of allegations regarding the removal of organs and tissues of children and adults for commercial purposes". [95] The Commission has urged States to strengthen existing laws or to adopt new laws to punish those who knowingly participate in the traffic of organs, in particular children's organs. [96]

C. Incest

91. Prior to 1993 incest had not been described as a form of slavery and did not explicitly fall under the existing definitions of slavery or child servitude set out in international law. In May 1993 the Working Group on Contemporary Forms of Slavery addressed the issue and expressed its concern at the practice of incest and the sexual abuse of children inside the family, observing that this practice "is probably the most common, most widespread, most reprehensible, most disgraceful, socially unacceptable, morally repugnant and spiritually harmful betrayal of children within the whole array of contemporary forms of slavery" [97]

92. The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, adopted in 1992, observes that "incest and child abuse within the family ... may lead to child prostitution" (para. 46), and urges States to take legislative, administrative, social and educational measures to protect children against all forms of abuse while in the care of parents, family, or others.

93. Incest is also a matter of concern to the Committee on the Rights of the Child not as a form of slavery but rather as a form of harmful child abuse contrary to the terms of the Convention on the Rights of the Child. It is addressed under the criminal codes and social welfare legislation of each country. Although incest and other forms of child abuse constitute serious violations of the Convention on the Rights of the Child, it is unlikely that incest falls within the ambit of the international conventions abolishing slavery. [98]

X. CONCLUSION

94. Despite wide belief to the contrary, slavery in its various forms remains prevalent as the world enters a new millennium. The concept of slavery has remained quite static during the nearly two centuries in which Governments and non-governmental organizations have attempted to seek its abolition. Nonetheless, as this updated report has illustrated, a number of slavery-like practices have evolved. In the past decade there have been proposals for yet further expansion of the definition of contemporary forms of slavery which may dilute efforts to eradicate the historical forms of slavery. Such proposals should be carefully scrutinized.

Notes

[1] Temporary Slavery Commission Report to the Council, League of Nations (A.19.1924.VI.B), para. 97. Slaves involved in growing and harvesting sugar cane in the West Indies in the eighteenth century were classified as "praedial" or predial slaves. See "Caribbean Agriculture" in A Historical Guide to World Slavery, Seymour Drescher and Stanley L. Engerman (eds.), 1998, p. 113.

[2] Ibid.

[3] "First session of the ILO Committee of Experts on Indigenous Labour", International Labour Review, vol. LXIV, No. 1, July 1951, pp. 61-84.

[4] C.W.W. Greenidge, Slavery at the United Nations, 1954, p. 8.

[5] "Serfdom in Medieval Europe", in The Historical Encyclopedia of World Slavery, Junius P Rodriguez (ed.), vol. 2, 1977, p. 575.

[6] See ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

[7] Report of the Committee of Experts on the Application of Standards, 1998, p. 100; The Commission of Inquiry on the observance of the Forced Labour Convention No. 29 in Myanmar agreed with this view having regard to the status of the abolition of forced or compulsory labour in general international law as a peremptory norm from which no derogations can be made. Report of the Commission of Inquiry Appointed under article 26 to Examine the Observance of Myanmar of the Forced Labour Convention, 1930 (No. 29), 1998, p. 72.

[8] United Nations document E/2815 (1955).

[9] General Conference of the ILO, Report IV (2), 40th Session (1957), p. 4.

[10] ILO Governing Body report, document 265/2 (1996), para. 32.

[11] See E/CN.4/SR.53 (1948).

[12] ILO Governing Body Report, supra note 10.

[13] International Labour Office, Practical Action to Eliminate Child Labour, 1997; see also J. Hilowitz, Labelling Child Labour Products, 1997.

[14] Convention No. 117 has been ratified by only 32 States.

[15] See also ILO Protection of Wages Convention, 1949 (No. 95) (additionally prohibiting methods of payment that deprive workers of the genuine possibility of terminating their employment), which has been ratified by 94 States. Recommendation No. 85 (indicating either twice a month or monthly as the acceptable periodicity of wage payments).

[16] Ibid., art. 9 (also requiring that deductions from wages be fair and authorized by national legislation, and specifically prohibiting "any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment").

[17] See, e.g. Bandhua Mukti Morcha v. Union of India & Others (1984) 2 S.C.R. 67 and Supreme Court of India decision of 13 August 1991 on Contempt of Court Petition in conjunction with Writ Petition (Civil) No. 2135 of 1982 Bandhua Mukti Morcha v. Union of India & Others (deciding that any workers who were paid less than the minimum wage were bonded labourers).

[18] ILO Convention No. 117, art. 10.

[19] Several previous conventions had a similar objective. ILO Convention No. 26 and Recommendation No. 30 (applicable to trades) and Convention No. 99 and Recommendation No. 89 (applicable to agriculture) stipulate that the minimum wage should not be fixed at a lower rate than one which would ensure the subsistence of the worker and his or her family.

[20] See section on The ILO and child labour, infra.

[21] Respectively, in India the Bonded Labour System (Abolition) Act, 1976 (amended 1985), and in Pakistan the Bonded Labour System (Abolition) Act, 1992.

[22] The range of abuses was described in detail by the Sub-Commission's Special Rapporteur on exploitation of labour through illicit and clandestine trafficking, Halima Embarek Warzazi, appointed in 1973. Her final report was issued as a United Nations publication in 1987 (Sales No. E.86.XIV.1).

[23] The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Assembly resolution 45/158 of 18 December 1990, which has not yet been ratified by enough States to come into force; ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). The provisions of the ILO conventions are mentioned in the section on Trafficking, infra.

[24] M. Wijers and Lin Lap-Chew, Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution, Global Alliance Against Trafficking in Women, 1997.

[25] See section on Traffic in persons other than for prostitution, infra.

[26] See section on Debt bondage, supra.

[27] Report of the Working Group on Contemporary Forms of Slavery on its twentieth session, (E/CN.4/Sub.2/1995/28), recommendation 8.

[28] Report of the Working Group on Contemporary Forms of Slavery on its twenty-first session (E/CN.4/Sub.2/1996/24), recommendation 9.

[29] E/CN.4/2000/12, para. 68.

[30] The terms "traffic" and "trafficking" refer to the same phenomenon in English. Confusion sometimes arises when these terms are translated into other languages using several different terms to denote different degrees of seriousness or enslavement, while in English only the single term "traffic" is employed. The Suppression of Traffic Convention refers in its English-language title to "the traffic in persons", in French to "la traite des êtres humains" and in Spanish to "la trata de personas". The terms "traite" and "trata" are the same terms as are used to refer to the word "trade" in the phrase "slave trade", as in the title of the Supplementary Convention, and appear to carry a stronger connotation of treating human beings as commodities than the term "traffic" conveys in English.

In contrast, however, the terms being used to refer to traffic in persons in current proposals for the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, are different, and the phrase "trafic de personnes" is used instead of "la traite des êtres humains", implying that the abuse being described is of a slightly lesser order than that denoted by "la traite".

[31] Traffic in women and girls: report of the Secretary-General (A/50/369) (1995), para. 17.

[32] See Kevin Tessier, "The New Slave Trade: The International Crisis of Immigrant Smuggling", Indiana Journal of Global Legal Studies, vol. 13 (1995-1996), p. 261 (concluding that "underground trade in human beings exacts such an enormous toll in human misery that it has been called a modern version of the slave trade".

[33] Lan Cao, "Illegal Traffic in Women: A Civil RICO [Racketeer Influenced and Corrupt Organization Act] Proposal", Yale Law Journal, vol. 96 (1987), p. 1297.

[34] U.O. Umozurike, "The African Slave Trade and the Attitude of International Law Towards It", Howard Law Journal, vol. 16 (1971), p. 346.

[35] These were the International Agreement for the Suppression of the White Slave Traffic of 1904, the International Convention of the Suppression of the White Slave Traffic of 4 May 1910, the Convention for the Suppression of the Traffic in Women and Children of 30 September 1921 and the Convention for the Suppression of the Traffic of Women of Full Age of 11 October 1933. A further draft convention was prepared by the League of Nations in 1937 but was not adopted.

[36] International Labour Office, "A New Kind of Trafficking: Child Beggars in Asia", World of Work, vol. 26 (1998), p. 17.

[37] Warzazi, supra note 22, para. 89.

[38] Inquiry on the status of combating of the traffic in persons and of the exploitation of the prostitution of others: report of the Secretary-General (E/CN.4/Sub.2/AC.2/1982/13), para. 139.

[39] See also Economic and Social Council resolution 1998/20 of 20 July 1998, entitled "Action to combat international trafficking in women and children" (stressing the importance of "sharing information, coordinating law enforcement activities ... in order to locate and arrest those who organize trafficking in women and children, as well as those who exploit those trafficked").

[40] See Kathleen Barry, Female Sexual Slavery, 1984 (pointing out the difficulty of assessing the extent of abduction, as escape is often difficult and, consequently, the abduction goes unreported).

[41] See "A Painful Trade for North Koreans", International Herald Tribune, 13-14 February 1999, p. 1 (discussing the phenomenon of selling children for food); Statement by the President of the General Assembly on International Day for the Abolition of Slavery, 2 December 1996 (GA/9190) (condemning as tragic cases where victims are sold with a family's complicity, especially in systems where children marry).

[42] See Uli Schmetzer, "Slave Trade Survives, Prospers Across Asia" China Tribune, 17 November 1991, p. C1 (noting that the target group for such procurement are those who are young, poor, and seeking financial security).

[43] The Traffic in Persons: Report of the Advisory Committee [to the Netherlands Minister of Foreign Affairs] on Human Rights and Foreign Policy (1992); see also Seminar on action against traffic in women and forced prostitution: note by the Secretary-General (E/CN.4/Sub.2/AC.2/1992/8) (proposing that the United Nations should consider extending the scope of relevant international regulations to include all forms of trafficking in persons irrespective of the activity persons are trafficked for); ILO Convention No. 143 (recognizing that trafficking occurs for purposes in addition to prostitution).

[44] See Revised Draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.5) (1999).

[45] Revised Draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.1/Rev.5) (2000).

[46] Revised Draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.6) (2000).

[47] Council of Europe Parliamentary Assembly Recommendation 1325 (1997) on Traffic in Women and Forced Prostitution (defining "traffic in women" as "any legal or illegal transporting of women and/or trade in them, with or without their initial consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage or other form of forced sexual exploitation"); Trafficking of Women to the European Union: Characteristics, Trends and Policy Issues, International Organization for Migration, 1996, p. 3 (defining trafficking in women as "any illicit transporting of migrant women and/or trade in them for economic personal gain", including facilitating their movement, with or without their consent, deceiving them about the purpose of the migration, legal or illegal, physically or sexually abusing them for the purpose of trafficking, selling, or trading in them for the purpose of employment, marriage, prostitution, or other forms of profit-making abuse).

[48] See also Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104, art. 2, (including "trafficking in women" in its definition of violence against women); Radhika Coomaraswamy, Report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1997/47) (discussing the causes of trafficking in women).

[49] Report of the Working Group on Contemporary Forms of Slavery on its twenty-third session (E/CN.4/Sub.2/1998/14), recommendations 3 and 4. The Working Group cited many instruments in its recommendations, including the slavery and forced labour conventions. The Commission on Human Rights also considers trafficking a form of violence against women and a violation of their human rights which must accordingly be eliminated (see Commission resolution 1994/45).

[50] Jean Fernand-Laurent, Report of the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others (E/1983/7), para. 39 (also stating that "such tourism is quite plainly the worst possible image of development which the industrialized countries could project").

[51] In 1995 the Working Group on Contemporary Forms of Slavery recommended that "[g]overnments prohibit advertising or publicizing sex tourism and they not facilitate other commercial activities involving sexual exploitation". Report of the Working Group on Contemporary Forms of Slavery on its twentieth session, supra note 27, recommendation 3 on the prevention of traffic in persons and the exploitation of the prostitution of others.

[52] The main instrument adopted to prevent such trafficking is the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1995, article 32.1 of which states: "No one shall derive improper financial or other gain from activity related to intercountry adoption."

[53] Article 34 of the Convention on the Rights of the Child addresses the use of children in prostitution or other unlawful sexual practices and in pornographic performances and materials.

[54] Supplementary Convention, art. 1 (d).

[55] Provisional report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/49/478) (1994), para. 31.

[56] See, e.g. Programme of Action of the International Conference on Population and Development, Report of the International Conference on Population and Development Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.96.IV.13, chap. I, resolution 1, annex, principle 11 (stating that "all States ... should give the highest possible priority to children" and that "[t]he child has the right to standards of living adequate for its well-being ... and to be protected ... from all forms of physical or mental violence ... maltreatment or exploitation, including sale, trafficking, sexual abuse and trafficking in its organs"); Final Report of the World Congress Against Commercial Exploitation of Children (Stockholm, August 1997) (considering the scope of the problem of child trafficking and measures that could be adopted to combat the problem); see also the report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4.1997/95 para. 116 (a), General Assembly resolution 51/66 of 31 January 1997, entitled "Traffic in women and girls".

[57] See also International Convention for the Suppression of the Traffic in Women of Full Age, art. 1 (similarly banning traffic in women "even with [their] own consent").

[58] Ibid. art. 2 (2). Note that article 6 of the Convention requires States parties to put an end to licensing or "special registration" of prostitutes.

[59] Michèle Hirsch, Plan of Action Against Traffic in Women and Forced Prostitution, Council of Europe EG(96) 2 (1996) (proposing, as a definition of "forced prostitution", the "act, for financial gain, of inducing a person by any form of constraint to supply sexual services to another person"); see also International Labour Organization, The Sex Sector: The Economic

and Social Basis of Prostitution in South East Asia, Lin Lean Lim (ed.), 1998 (describing forced prostitution as "the ownership of women and children by pimps, brothel owners and sometimes even customers for the purpose of financial gain, sexual gratification and/or power and domination").

[60] See, e.g. report of the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others (E/1983/7), para. 23 (asserting that "even when prostitution seems to have been chosen freely, it is actually the result of coercion", and quoting from the testimony given to the Congress of Nice on 8 September 1981 by three "collectives of women prostitutes": "As prostitutes, we are all aware that all prostitution is forced prostitution. Whether we are forced to become prostitutes by lack of money or by housing or unemployment problems, or to escape from a family situation of rape or violence (which is often the case with very young prostitutes), or by a procurer, we would not lead the 'life' if we were in a position to leave it."); Kathleen Barry, The Prostitution of Sexuality, 1995 (arguing that there is no such thing as consensual prostitution and calling for the elimination of prostitution in all its forms); Centre on Speech, Equality and Harm, Creating an International Framework for Legislation to Protect Women and Children from Commercial Sexual Exploitation, University of Minnesota Law School Preliminary Report (1998) (arguing that only coerced prostitution should be controlled and prevented).

[61] Nancy Erbe, "Prostitutes, Victims of Men's Exploitation and Abuse", Law and Inequality Journal vol. 2 (1984), pp. 609, 612-613; John F. Decker, Prostitution: Regulation and Control, 1979, p. 230 (defining "pimp" as one who "draws another into prostitution and thereafter dictates the daily activities, supervises the manner of operation, ... expropriates and spends virtually all earnings and otherwise commands influence over that person's life". Under such circumstances the control may become so complete that the pimp "will have little difficulty actually selling his 'possession' to another pimp".); see also The Lively Commerce: Prostitution in the United States, 1971, p. 117.

[62] See Neal Kumar Hatyal, "Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution", Yale Law Journal, vol. 103 (1993), pp. 791, 793 (pointing out that "forced prostitution like slavery implicates all of the core concerns of the Thirteenth Amendment - physical abuse, lack of free will, forced labour and social stratification"); Update of the Report on Slavery submitted to the Sub-Commission in 1966: report by Mr. Benjamin Whitaker, Special Rapporteur (E/CN.4/Sub.2/1982/20), p. 8 (considering forced prostitution a form of slavery).

[63] Additional Protocol I also affords, in art. 76 (1), special protection and respect to women, "in particular against rape, forced prostitution and any other form of indecent assault"; see also Additional Protocol II prohibiting "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault [and] slavery and the slave trade in all their forms" (art. 4 (2) (e)); the Platform for Action adopted by the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), para. 144 (b) (urging Governments to "respect fully the norms of international humanitarian law in armed conflicts and take all measures required for the

protection of women and children in particular against rape, forced prostitution and any other form of indecent assault"); Tong Yu, "Reparation for Former Comfort Women of World War II", Harvard International Law Journal, vol. 36 (1995), p. 533.

[64] Mass Rape: The War Against Women in Bosnia-Herzegovina, Alexandra Stiglmayer (ed.), 1994; Beverly Allen, Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia, 1996.

[65] In its resolution 1996/24, for example, it endorsed the conclusion reached at the Fourth World Conference on Women and asked that Governments adopt the practical proposals aimed at eliminating prostitution as it violates basic human rights. At the same session, in 1996, the Commission approved the Programme of Action for the Prevention of the Traffic in Persons and the Exploitation of the Prostitution of Others (E/CN.4/Sub.2/1995/28/Add.1).

[66] See also section on Child labour and child servitude, infra.

[67] The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography pointed to particular circumstances sometimes associated with child prostitution, including incest and sexual abuse within the family, sex tourism and the posting of military personnel to bases abroad or in situations where they might pay a child for sex.

[68] Linda Chavez, Systematic rape, sexual slavery and slavery-like practices during periods of armed conflict (E/CN.4/Sub.2/1996/26).

[69] Report of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1996/63); Report of the Special Rapporteur on the situation of human rights in Rwanda (E/CN.4/1996/68) ; see e.g. Gay J. McDougall, Systematic rape, sexual slavery and slavery-like practices during times of war (E/CN.4/Sub.2/1998/13) (pointing out that detaining women in "rape camps or comfort stations [and] forced temporary 'marriages' to soldiers are both in fact and law forms of slavery contrary to the international standards" (para. 8)); Rape and abuse of women in the areas of armed conflict in the former Yugoslavia: report of the Secretary-General (A/51/557) (citing General Assembly resolution 50/192 strongly condemning the abhorrent practice of rape and abuse of women and children in the area of armed conflict in the former Yugoslavia and reaffirming that rape in the conduct of armed conflict constituted a war crime).

[70] The suppression of slavery: memorandum submitted by the Secretary-General to the Ad Hoc Committee on Slavery (ST/SPA/4) (1951), p. 31.

[71] See General Recommendation No. 19 (eleventh session, 1992) in Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38 (A/47/38), chap. I.

[72] Markus Dreixler, Der Mensch als Ware - Erscheinungsformen modernen Menschenhandels unter strafrechtlicher Sicht, 1998, p. 200.

[73] See also the Declaration of the Rights of the Child, proclaimed by the General Assembly in resolution 1386 (XIV) of 20 November 1959, *principle 2*.

[74] Jannelle M. Diller and David A. Levy, "Child Labour, Trade and Investment: Towards the Harmonization of International Law", American Journal of International Law, vol. 19 (1997), p. 663.

[75] The earlier standards, from 1919 to 1932, generally set the basic minimum age at 14 years and this age was later revised to 15. The ILO conventions targeting particularly hazardous sectors set higher age limits, for example, 16 years for underground work (Convention No. 123 of 1965) and up to 18 for work involving exposure to radiation (Convention No. 115 of 1960) or dangerous chemicals (Convention No. 136 of 1971).

[76] ILO Minimum Age Convention, 1973 (No. 138), art. 2 (3) and 2 (4).

[77] Ibid., art. 7 (1) and 7 (4).

[78] Ibid., art. 3 (1).

[79] The Supplementary Convention also contains an implicit prohibition of the exploitation of the labour of young girls through early marriage. Hans Engen concluded in his report that a supplementary convention on slavery was necessary to cover "slavery-like practices not included in the Slavery Convention 1926". See E/2673 (1955).

[80] A "sham adoption" occurs when a family, generally in financial difficulty, gives or sells a child to a richer family, nominally to be adopted, but in reality to work in the rich family's household without enjoying either the same status or the same treatment as ordinary children in the household into which they are adopted. A similar practice, still widely reported, involves children being sent to the households of relatives or others who are expected by the child's parents to give special attention to their education, but in reality exploit the child's labour. The largest group of children whose predicament falls into this category, currently numbering in the millions, and primarily girls, are those employed as live-in domestics.

[81] "A New Kind of Trafficking: Child Beggars in Asia", World of Work, supra note 36.

[82] See Recommendations concerning economic exploitation of children in Report of the Committee on the Rights of the Child, Official Records of the General Assembly, Forty-ninth Session, Supplement No. 41 (A/49/41) (1994), chap. I.

[83] Commission on Human Rights resolution 2000/59, annex A. For further information see section on Trafficking in children, supra, see also Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, 1998, p. 473.

[84] Commission on Human Rights resolution 2000/59, annex B; see G. Goodwin-Gill and I. Cohn, Child Soldiers: The Role of Children in Armed Conflicts, 1994; see also C. Hamilton and T. Abu El Haj, "Armed Conflict and the Protection of Children in International Law", International Journal of Child Rights, vol. 5 (1997), p. 1.

[85] See Graça Machel, The impact of armed conflict on children (A/51/306) (1996); The Position of the ICRC on the Optional Protocol to the Convention on the Rights of the Child, 1997.

[86] Article 8 (2) (b) (xxvi) and 8 (2) (e) (vii).

[87] See Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its sixth session (E/CN.4/2000/74).

[88] Report of the Working Group on Slavery on its first session (E/CN.4/Sub.2/AC.2/3) (1975), para. 16.

[89] Report of the Working Group on Slavery on its ninth session (E/CN.4/Sub.2/1983/27), recommendations 3 and 13.

[90] Report of the Working Group on Contemporary Forms of Slavery on its seventeenth session (E/CN.4/Sub.2/1992/34), p. 26.

[91] V. Muntarbhorn, Report on the sale of children (E/CN.4/1991/51), paras. 23-25. The issue of organ trafficking was also referred to by Ofelia Calcetas-Santos in her reports on the sale of children, child prostitution and child pornography submitted to the General Assembly (A/50/456), para. 49, in 1995 and to the Commission on Human Rights (E/CN.4/1996/100), paras. 41-48.

[92] World Health Organization, Human Organ Transplantation, A Report on Developments Under the Auspices of WHO (1987-1991) (1991); see also WHO Executive Board, 8th Session, document EB87.R22 and World Health Assembly, 44th Session, resolution WHA44.25.

[93] Report of the Working Group on Contemporary Forms of Slavery on its sixteenth session, (E/CN.4/Sub.2/1991/41), para. 138.

[94] Report of the Working Group on Contemporary Forms of Slavery on its nineteenth session, (E/CN.4/Sub.2/1994/33), recommendation 2 (b).

[95] Commission on Human Rights resolution 1996/61; Report of the Working Group on Contemporary Forms of Slavery on its twenty-first session (E/CN.4/Sub.2/1996/24).

[96] Commission on Human Rights resolution 1996/61; Programme of Action on the Traffic in Persons and the Exploitation of the Prostitution of Others, art. 28.

[97] Report of the Working Group on Contemporary Forms of Slavery on its eighteenth session (E/CN.4/Sub.2/1993/30), p. 40.

[98] Although the distinction between slavery and incest has not been delineated in a formal manner, it has been implicitly accepted in some national courts. Akhil Reed Amar and Daniel Widawsky, "Child Abuse as Slavery: A Thirteenth Amendment Response to DeShaney", Harvard Law Review, vol. 106 (1992), p. 1359 (discussing a recent claim that, in the United States, child abuse is covered by the Thirteenth Amendment to the Constitution which prohibits the existence of slavery or involuntary servitude, which argument was rejected by the United States courts).

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Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES
REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Situation of human rights in the Republic of the Congo

Note by the secretariat

1 In its resolution 1999/1, the Sub-Commission on the Promotion and Protection of Human Rights requested the Secretary-General to submit a report on the situation of human rights in the Republic of the Congo to the Commission on Human Rights and the Sub-Commission at their next sessions and recommended that the Commission should consider the question. The Sub-Commission decided, if the Commission was unable to do so, to continue consideration of the question at its fifty-second session.

2 The Secretary-General submitted to the Commission at its fifty-sixth session a report on the situation of human rights in the Republic of the Congo (E/CN.4/2000/30), which is available to the members of the Sub-Commission.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Violations of the rights of human rights defenders in all countries

Report of the High Commissioner for Human Rights

1. In paragraph 6 of its resolution 1999/3 the Sub-Commission requested the United Nations High Commissioner for Human Rights to inquire about the security situation of persons listed in the annex to the resolution and to inform the Sub-Commission, at its fifty-second session, of the results of her inquiries.

2. On 31 January 2000 the High Commissioner, in compliance with the above-mentioned resolution, transmitted to the Governments of Cambodia, Syria, Turkey, Tunisia, Federal Republic of Yugoslavia, Togo, Zimbabwe and the Democratic Republic of the Congo communications concerning the security situation of, respectively: Kim Sen and Meas Minear, members of the Cambodian League for the Promotion and Defence of Human Rights; Nizar Nayyouf, a leading member of the Independent Committees for the Defence of Democratic Freedoms and Human Rights in the Syrian Arab Republic; Mehmet Eren, a reporter for the weekly magazine, Heviy, in Turkey; Radhia Nasraoui, a lawyer and member of the Tunisian

League for Human Rights; Flora Brovina, a Kosovar human rights defender; Nestor Tengue, François Gayibor and Brice Santanna, members of the Togo Human Rights Association; Keith Goddard, Programme Coordinator and co-founder of the Gay and Lesbian Group Zimbabwe (GALZ); and Floribert Chebeya, President of Voix des sans voix, Democratic Republic of the Congo.

3. The following information has been provided to the Office of the High Commissioner for Human Rights (OHCHR) in response to the above-mentioned communications.

Mehmet Eren, reporter for the weekly magazine, Heviy, Turkey

4. By letter dated 7 April 2000 the Government of Turkey informed the High Commissioner that Mr. Mehmet Eren had been taken into custody on 16 November 1998 by the Directorate-General of Security in Diyarbakir on the grounds of his participation in the illegal demonstrations held in Diyarbakir in support of the illegal terrorist organization, the Kurdistan Workers Party (PKK) and its leader Abdullah Ocalan. He was released from detention on 25 November 1998. It had been established through medical reports issued during his period of detention that he had not been subjected to torture or ill-treatment, nor had he lodged any complaint.

5. The Government also informed the High Commissioner that the case had previously been reported to it through a communication received under the 1503 procedure and had been cleared up by the Working Group on Communications in July 1999.

6. The Government of Turkey stated that, in compliance with a request made by the Sub-Commission in resolution 1999/3, the case had been lodged with the State Security Court of Diyarbakir for investigation as to whether Mr. Mehmet Eren had been subjected to torture or ill-treatment by the relevant Turkish authorities.

Radhia Nasraoui, lawyer and member of the Tunisian League for Human Rights

7. By letter dated 2 May 2000, the Tunisian Government informed the High Commissioner that Ms. Radhia Nasraoui had, with other persons, been involved in the offences of maintaining an illegal association, defamation of public order, distribution of tracts liable to disrupt public order, publication of false information and holding of illegal meetings.

8. The Government informed the High Commissioner that, throughout the duly conducted judicial proceedings, Ms. Nasraoui benefited from all the guarantees provided for in Tunisian legislation (presence of counsel, adversarial deliberations, public hearing).

9. According to the information communicated by the Government, Ms. Nasraoui was at first instance given a suspended sentence of six months' imprisonment by the Sixth Correctional Division of the Tunis Court of First Instance, which passed judgement after hearing the defendants and the other parties. Ms. Nasraoui and the Public Prosecutor lodged appeals.

10. The case was scheduled to be heard in the Fourteenth Division of the Tunis Court of Appeal on 3 August 1999, but was postponed until 6 August at the request of the defence. The judgement of the Court of Appeal handed down on that date confirmed the verdict at first instance.

11. The defendant and the Public Prosecutor lodged appeals with the Court of Cassation. The Government stated that, as of the date of the letter, this Court had not handed down its judgement.

12. The Tunisian Government observed that the prosecution and conviction of Ms. Nasraoui are the result of acts characterized as offences under the ordinary law and are totally unrelated to her alleged human rights activities. Consequently, Ms. Nasraoui acted in breach of Tunisian law, which protects public, individual and collective freedoms, in the context of the Constitution and the laws.

13. The judicial proceedings, the Government states, were conducted in a manner fully consistent with the provisions of the Tunisian code of criminal procedure; these provisions protect the rights of the defence.

14. In addition, several thematic mechanisms of the Commission on Human Rights took action in respect of the following persons concerned.

Radhia Nasraoui

15. On 13 August 1999 the Special Rapporteur on the independence of judges and lawyers sent an urgent appeal to the Government of Tunisia concerning the situation of Ms. Radhia Nasraoui. On 24 December 1999, the Government informed the Special Rapporteur that during her trial Ms. Nasraoui had benefited from all the judicial guarantees provided by Tunisian law. She had been sentenced, along with others, by the Sixth Correctional Division of the Tunis Court of First Instance.

16. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reported on Ms. Nasraoui's case to the Commission on Human Rights at its fifty-sixth session. In his report on his mission to Tunisia (6 to 10 December 1999), the Special Rapporteur expressed his particular concern about the alleged harassment of certain lawyers, especially Ms. Nasraoui (E/CN.4/2000/63/Add.4, para. 63).

Nizar Nayyouf

17. On 26 April 1999, the Special Rapporteur on torture and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint urgent appeal to the Government of Syria on behalf of Nizar Nayyouf. By letter dated 7 June 1999, the Government replied that Nizar Nayyouf had been arrested for participating, with a group of Syrian citizens, in the formation of an organization that engaged in opposition activities prejudicial to the security of the State with support from bodies outside Syria. The Government stated that the group deliberately disseminated false information and caused harm to their country under the pretext of defending human rights. Mr. Nayyouf had been sentenced in

accordance with the law. Regarding his state of health, the Government replied that he was receiving the requisite health care in the same way as any other prisoner, including having been transferred to a hospital and placed under the supervision of medical specialists. It further replied that he was not suffering from Hodgkin's disease, and that his only complaint was a discal hernia. Physicians supervising his case had reportedly decided that he did not require surgery but only medicinal treatment. The Government reported that his state of health was improving as a result of the treatment he was receiving.

18. On 7 October 1999 the Working Group on Arbitrary Detention sent an urgent appeal to the Government of Syria concerning the continued detention of Nizar Nayyouf. By note of 25 October 1999, the Government reiterated its position of 7 June 1999.

Flora Brovina

19. On 8 June 1999 the Working Group on Arbitrary Detention sent an urgent appeal to the Government of the Federal Republic of Yugoslavia concerning the security situation of Flora Brovina. No reply was received from the Government.

Nestor Tengue, François Gayibor and Brice Santana

20. On 11 May 1999, the Special Rapporteur on torture, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal on behalf of Nestor Tengue and François Gayibor, executive members of the Togolese Association for the Defence and Promotion of Human Rights (ATDPDH), both of whom had been arrested by the police in Lomé on 3 May 1999. They were reportedly being held on Sûreté Nationale premises in Lomé, charged with "jeopardizing the credit and security of the State, dissemination of false information, forgery and the use of forgeries" for having transmitted to international human rights organizations erroneous information about violations committed by the Togolese Government, and for having followed the instructions of the opposition parties, the Democratic Convention of African Peoples (CDPA) and the Union of the Forces for Change (UFC). By letter dated 27 July 1999, the Government responded to this urgent appeal by stating that an inquiry had been initiated by the Central Directorate of the Judicial Police concerning the activities of the ATDPDH. The inquiry revealed that some of its members, including the persons referred to above, had offered to take photographs of the bodies of victims of traffic accidents with the aim of attributing those deaths to the security forces and to send the photos to the non-governmental organization Amnesty International. On 7 May 1999 they were brought before the Lomé Public Prosecutor's Office after an extension of police custody granted by the Public Prosecutor. An investigation was initiated on the grounds of their suspected complicity in damage to honour, dissemination of false information and incitement to rebellion. They were charged, and warrants of commitment were issued on 7 and 14 May 1999. On the application of the Public Prosecutor, they were released on 18 June 1999; the investigation is continuing. Lastly, the Government assured the Special Rapporteurs that Togo, in conformity with its international commitments, had made significant progress in ensuring respect for human rights, particularly in the judicial sphere, and by way of example mentioned the fact that the National Human Rights Commission had closely followed developments in that case.

Floribert Chebeya

21. The Special Rapporteur on torture and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint letter dated 4 October 1999 to the Government of the Democratic Republic of the Congo in which the case of Floribert Chebeya was mentioned. No reply was received from the Government.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

The death penalty, particularly in relation to juvenile offenders

Note by the Secretariat

1. In its resolution 1999/4, the Sub-Commission on the Promotion and Protection of Human Rights requested the Secretary-General to submit to it at its fifty-second session information concerning the number of executions of juveniles carried out between the adoption of the resolution and the start of the next session of the Sub-Commission and on the number of executions generally carried out in the same period.

2. The Sub-Commission will have available to it the sixth quinquennial report of the Secretary-General on capital punishment and implementation of safeguards guaranteeing protection of the rights of those facing the death penalty, covering the period 1994-1998 (E/2000/3), which is due in 2000 in accordance with Economic and Social Council resolution 1995/57.

3. The United Nations Centre for International Crime Prevention in Vienna shall undertake its sixth survey by questionnaire of Governments, intergovernmental organizations and non-governmental organizations and, on the basis of the results and supplementary data, including the results of criminological research, shall submit a revised version of the report by January 2001. That report will also include information concerning the number of executions of juveniles.

4. When the revised sixth quinquennial report is received by the Office of the High Commissioner for Human Rights, it shall be made available to the Sub-Commission.

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Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)

Status of withdrawals and reservations with respect to the International Covenants on Human Rights

Report of the Secretary-General

GE.00-13885 (E)

I. INTRODUCTION

1. In its resolution 1999/5, the Sub-Commission on the Promotion and Protection of Human Rights requested the Secretary-General to submit a report on the status of withdrawals and reservations with regard to the international human rights treaties to the Commission on Human Rights and the Sub-Commission. Pursuant to that request, a report was submitted to the Commission at its fifty-sixth session in document E/CN.4/2000/96. The information contained therein is updated in the present report, which has been prepared for the Sub-Commission in accordance with the same resolution. This report presents in tabular form the status of reservations, declarations and understandings made by States parties to the component treaties of the International Bill of Human Rights, any communications received thereon, as well as any notifications received concerning withdrawals from these treaties. The text of all reservations, declarations, understandings and all communications relating to them with respect to these and other multilateral treaties are normally reproduced in full in the annual publication, Multilateral Treaties deposited with the Secretary-General.*

II. STATUS OF RESERVATIONS, DECLARATIONS AND UNDERSTANDINGS, AND COMMUNICATIONS RECEIVED THEREON

A. International Covenant on Economic, Social and Cultural Rights

2. There are 142 States parties to this treaty. The States parties indicated in table 1 have communicated to the Secretary-General reservations, declarations or understandings with respect to it.

Table 1. Reservations, declarations and understandings made with respect to the International Covenant on Economic, Social and Cultural Rights

State party	Treaty provisions to which reservations, declarations or understandings were made
Afghanistan	Art. 26, paras. 1 and 3
Algeria	Arts. 1, 8, 13, paras. 3 and 4, and 14
Bangladesh	Arts. 1, 2, 3, 7, 8, 10 and 13
Barbados	Arts. 7, para. (a) (1), 10, para. 2, and 13, para. 2 (a)
(Belarus)	(Reservations withdrawn)
Belgium	Art. 2, paras. 2 and 3
Bulgaria	Art. 26, paras. 1 and 3
Congo	Art. 13, paras. 3 and 4
Czech Republic	a/
Denmark	Art. 7 (d)
	(Reservation to art. 7, para. (a) (i) withdrawn)

* United Nations publication. The sales number of the most recent edition (status as at 30 April 1999) is E.99.V.5. A regularly updated version of this publication can be viewed for a fee through the Internet site of the Office of Legal Affairs at "http://www.un.org/Depts/Treaty".

State party	Treaty provisions to which reservations, declarations or understandings were made
Egypt	General declaration
France	General declaration, arts. 6, 8, 9, 11 and 13
Germany	b/
Guinea	Arts. 1, para. 3, 14 and 26, para. 1
Hungary	Art. 26, paras. 1 and 3
India	Arts. 1, 4, 7 para. (c), and 8
Iraq	General statement
Ireland	Arts. 2, para. 2, and 13, para. 2 (a)
Japan	Arts. 7, para. (d), 8, paras. 1 (d) and 2, and 13, para. 2 (b) and (c)
Kenya	Art. 10, para. 2
Kuwait	Arts. 2, para. 2, 3, 8, para. 1 (d), and 9
Libyan Arab Jamahiriya	General statement
Madagascar	Art. 13, para. 2
Malta	Art. 13 (Reservation on art. 10, para. 2, withdrawn)
Mexico	Art. 8
Monaco	Art. 2, para. 2, 6, 8, 9, 11 and 13
Mongolia	Art. 26, para. 1
Netherlands	Art. 8, para. 1 (d), in respect of Netherlands Antilles
New Zealand	Arts. 8 and 10, para. 2
Norway	Art. 8, para. 1 (d)
Portugal	General statement and art. 1 in respect of Macau
Romania	Arts. 1, para. 3, 14 and 26, para. 1
Russian Federation	Art. 26, para. 1
Rwanda	General statement
Slovakia	a/
Solomon Islands	Arts. 10, para. 1, 13, para. 2 (a), and14 c/
Sweden	Art. 7, para. (d)
Syrian Arab Republic	General statement; art. 26, para. 1
Thailand	Art. 1, para. 1
Trinidad and Tobago	Art. 8, paras. 1 (d) and 2

State party	Treaty provisions to which reservations, declarations or understandings were made
Ukraine	Art. 26, para. 1
United Kingdom of Great Britain and Northern Ireland	General statement in respect of Southern Rhodesia; art. 1; art. 2, para. 3 in respect of the British Virgin Islands, the Cayman Islands, the Gilbert Islands, the Pitcairn Islands Group, St. Helena and Dependencies, the Turks and Caicos Islands and Tuvalu; art. 6; art. 7, para. (a) (i) in respect of Jersey, Guernsey, the Isle of Man, Bermuda, Hong Kong and the Solomon Islands; art. 8, para. 1 (b) in respect of Hong Kong; art. 9 in respect of the Cayman Islands and the Falkland Islands (Malvinas); art. 10, para. 1 in respect of the Solomon Islands, para. 2 in respect of Bermuda and the Falkland Islands; art. 13, para. 2 (a), and art. 14 in respect of the Gilbert Islands, the Solomon Islands and Tuvalu
Viet Nam	Art. 26, para. 1
Yemen	General statement d/
Zambia	Art. 13, para. 2 (a)

a/ In 1975, Czechoslovakia ratified the Covenant with reservations.

b/ The German Democratic Republic had signed and ratified the Covenant with reservations in 1973. The Federal Republic of Germany had ratified the Covenant in 1973 with a declaration

c/ Upon succeeding to the Covenant in 1982, the Government of the Solomon Islands declared that the Solomon Islands maintained the reservations entered by the United Kingdom save insofar as the same could not apply to the Solomon Islands.

d/ The formality was effected by the Yemen Arab Republic. In 1990, the Secretary-General was informed by the Ministers for Foreign Affairs of the Yemen Arab Republic and the People's Democratic Republic of Yemen that their countries would merge in a single sovereign State called the Republic of Yemen and that all treaties and agreements concluded between either the Yemen Arab Republic or the People's Democratic Republic of Yemen and other States and international organizations in accordance with international law which were in force on the day of their merger would remain in effect.

3. Communications on reservations, declarations or understandings have been received by the Secretary-General as indicated below in table 2.

Table 2. Communications on reservations, declarations or understandings made to the International Covenant on Economic, Social and Cultural Rights

Communication received from:	With respect to reservations, declarations or understandings made by:
Finland	Bangladesh, Kuwait
France	Bangladesh, India
Germany	Algeria, India, Kuwait
Israel	Iraq, Libyan Arab Jamahiriya, Syrian Arab Republic
Italy	Kuwait
Netherlands	Algeria, India, Kuwait
Norway	Kuwait
Portugal	Algeria
Sweden	Bangladesh, Kuwait

B. International Covenant on Civil and Political Rights

4. There are 144 States parties to this treaty. The States parties indicated in table 3 have communicated to the Secretary-General reservations, declarations or understandings with respect to it.

Table 3. Reservations, declarations and understandings with respect to the International Covenant on Civil and Political Rights

State party	Treaty provisions to which reservations, declarations or understandings were made
Afghanistan	Art. 48, paras. 1 and 3
Algeria	Arts. 1, 22 and 23, para. 4
Argentina	Art. 15
Australia	General statement, arts. 10, paras. 2 (a) and (b) and para. 3, second sentence, 14, para. 6, 19, 21 and 22 (Reservations and declarations made on arts. 2, 10, 14, 17, 19, 20, 25 and 50 withdrawn)
Austria	Arts. 2, para. 1, 9, 10, para. 3, 12, para. 4, 14, paras. 3 (d), 5 and 7, 19, 21, 22 and 26

State party	Treaty provisions to which reservations, declarations or understandings were made
Barbados	Art. 14, para. 3 (d)
(Belarus)	(Declaration on art. 48, para. 1, withdrawn)
Belgium	Arts. 10, paras. 2 (a) and 3, 14, paras. 1 and 5, 19, 20, 21, 22 and 23, para. 2 (Reservations to arts. 2, 3 and 25 withdrawn)
Belize	Arts. 12, para. 2, and 14, paras. 3 (d) and 6
Bulgaria	Art. 48, paras. 1 and 3
Congo	Art. 11
Czech Republic	a/
Denmark	Arts. 10, para. 3, second sentence, 14, paras. 1, 5 and 7, and 20, para. 1
Egypt	General declaration
Finland	Arts. 10, paras. 2 (b) and 3, 14, para. 7, and 20, para. 1 (Reservations to arts. 13 and 14, para. 1, withdrawn)
France	General statement; arts. 4, para. 1, 9, 13, 14, 19, 20, para. 1, 21, 22 and 27 (Reservation to art. 19 withdrawn)
Gambia	Art. 14, para. 3 (d)
Germany b/	Arts. 2, para. 1, 14, paras. 3 (d) and 5, 15, para. 1, 19, 21 and 22
Guinea	Art. 48, para. 1
Guyana	Art. 14, paras. 3 (d) and 6
Hungary	Art. 48, paras. 1 and 3
Iceland	Art. 10, para. 2 (b) and 3, second sentence, 13, 14, para. 7, and 20, para. 1 (Reservation to art. 8, para. 3 (a), withdrawn)
India	Arts. 1, 9 and 13
Iraq	General statement
Ireland	Art 10, para. 2, 14, 19, para. 2, and 20, para. 1 (Declarations on arts. 6, para. 5, 14, para. 6, and 23, para. 4, withdrawn)
Israel	Art. 23
Italy	Art. 9, para. 5, 12, para. 4, 14, paras. 3 and 5, 15, para. 1, and 19, para. 3
Japan	Art. 22, para. 2
Kuwait	Arts. 2, para. 1, 3, 23 and 25, para. (b)
Libyan Arab Jamahiriya	General statement

State party	Treaty provisions to which reservations, declarations or understandings were made
Liechtenstein	Arts. 3, 14, para. 1, 17, para. 1, 24, para. 3, and 26 (Reservation to art. 20 withdrawn)
Luxembourg	Arts. 10, para. 3, 14, paras. 3 and 5, 19, para. 2, and 20
Malta	Arts. 13, 14, paras. 2 and 6, 19, 20 and 22
Mexico	Arts. 9, para. 5, 13, 18 and 25 (b)
Monaco	Arts. 2, paras. 1 and 2, 3, 13, 14, para. 5, 19, 21, 22, 25 and 26
Mongolia	Art. 48, para. 1
Netherlands	Arts. 10, 12, paras. 1, 2 and 4, 14, paras. 3 (d), 5 and 7, 19, para. 2, and 20, para. 1 (Reservation on application of art. 25 (c) in the Netherlands Antilles withdrawn)
New Zealand	Arts. 10, paras. 2 (b) and 3, 14, para. 6, 20 and 22
Norway	Arts. 10, paras. 2 (b) and 3, 14, paras. 5 and 7, and 20, para. 1 (Reservation to art. 6, para. 4, withdrawn)
Portugal	General statement and arts. 1, 12, para. 4, 13 and 25, para. (b), in respect of Macau
Republic of Korea	Arts. 14, para. 5, and 22 (Reservation to arts. 14, para. 7, and 23, para. 4, withdrawn)
Romania	Arts. 1, para. 3, and 48, para. 1
Russian Federation	Art. 48, para. 1
Slovakia	a/
Sweden	Arts. 10, para. 3, 14, para. 7, and 20, para. 1
Switzerland	Arts. 10, para. 2 (b), 12, para. 1, 14, paras. 1, 3 (d) and (f) and 5, 14, para. 5, 20, para. 1, 25 (b), and 26 (Reservation to art. 20, para. 2, withdrawn)
Syrian Arab Republic	Art. 48, para. 1
Thailand	Arts. 1, para. 1, 6, para. 5, 9, para. 3, and 20, para. 1
Trinidad and Tobago	Arts. 4, para. 2, 10, paras. 2 (b) and 3, 12, para. 2, 14, paras. 5 and 6, 15, para. 1, last sentence, c/ 21 and 26
Ukraine	Art. 48, para. 1

State party	Treaty provisions to which reservations, declarations or understandings were made
United Kingdom of Great Britain and Northern Ireland	General reservation, General declaration in relation to Southern Rhodesia, art. 1; art. 10, para. 2 (a) in relation to Gibraltar, Montserrat and the Turks and Caicos Islands, paras. 2 (b) and 3; art. 11 in relation to Jersey; art. 12, paras. 1 and 4; art. 13 in relation to Hong Kong; art. 14, para. 3 (d) in relation to the British Virgin Islands, the Cayman Islands, the Falkland Islands (Malvinas), the Gilbert Islands, the Pitcairn Islands Group, St. Helena and Dependencies and Tuvalu; art. 20, art. 23, para. 3, in relation to the Solomon Islands; art. 24, para. 3; art. 25 (b) in relation to Hong Kong (Reservation to art. 25 (c) withdrawn)
United States of America	General understanding; declaration on arts. 1-27; arts. 2, para. 1, 4, para. 1, 5, para. 2, 7, 9 para. 5, 10, paras. 2 (a), (b) and 3, 14, paras. 3 (b), (d), (e), 4, 6 and 7, 15, para. 1, 19, para. 3, 20, 26 and 47
Venezuela	Art. 14, para. 3 (d)
Viet Nam	Art. 48, para. 1
Yemen	General statement d/

a/ In 1975, Czechoslovakia ratified the Covenant with reservations and declarations.

b/ In 1973, the German Democratic Republic had signed and ratified the Covenant with reservations and declarations. In 1997, the Government of Germany communicated that it wished to call attention to the reservations made by the Federal Republic of Germany upon ratification of the Covenant with regard to articles 19, 21 and 22 in conjunction with articles 2, paragraph 1, 14, paragraphs 3 and 5, and 15, paragraph 1.

c/ In a communication received by the Secretary-General in 1979, the Government of Trinidad and Tobago confirmed that its statement regarding article 15, paragraph 1, constituted an interpretative declaration which did not aim to exclude or modify the legal effect of the provisions of the Covenant.

d/ The formality was effected by the Yemen Arab Republic. In 1990, the Secretary-General was informed by the Ministers for Foreign Affairs of the Yemen Arab Republic and the People's Democratic Republic of Yemen that their countries would merge in a single sovereign State called the Republic of Yemen and that all treaties and agreements concluded between either the Yemen Arab Republic or the People's Democratic Republic of Yemen and other States and international organizations in accordance with international law which were in force on the day of their merger would remain in effect.

5 Communications on reservations, declarations or understandings have been received by the Secretary-General as indicated below in table 4.

Table 4 Communications on reservations, declarations or understandings made to the International Covenant on Civil and Political Rights

Communication received from	With respect to reservations, declarations or understandings made by:
Belgium	Congo, United States of America
Czech Republic a/	Republic of Korea
Denmark	United States of America
Finland	Kuwait, United States of America
France	India, United States of America
Germany	Algeria, France, Kuwait, Republic of Korea, Trinidad and Tobago, United States of America
Israel	Iraq, Libyan Arab Jamahiriya, Syrian Arab Republic
Italy	United States of America
Netherlands	Australia, Congo, Kuwait, Republic of Korea, Thailand, Trinidad and Tobago, United States of America
Norway	Kuwait, United States of America
Portugal	United States of America
Slovakia a/	Republic of Korea
Spain	United States of America
Sweden	Kuwait, United States of America
United Kingdom of Great Britain and Northern Ireland	Republic of Korea

a/ The objection was communicated to the Secretary-General in 1991 by the Government of Czechoslovakia on behalf of the Government of the Czech and Slovak Federal Republic.

C Optional Protocol to the International Covenant on Civil and Political Rights

6 There are 95 States parties to the Optional Protocol. The States parties indicated in table 5 have communicated to the Secretary-General reservations, declarations or understandings with respect to it.

Table 5. Reservations, declarations or understandings made with respect to the Optional Protocol to the International Covenant on Civil and Political Rights

State party	Treaty provisions to which reservations, declarations or understandings were made
Austria	Art. 5, para. 2
Chile	General statement
Croatia	Arts. 1 and 5, para. 2 (a)
Denmark	Art. 5, para. 2 (a)
El Salvador	General statement, art. 9, para. 2
France	Arts. 1, 5, para. 2 (a) and 7
Germany	Art. 5, para. 2 (a) and 26
Guyana	Art. 6 of the International Covenant on Civil and Political Rights
Iceland	Art. 5, para. 2
Ireland	Art. 5, para. 2
Italy	Art. 5, para. 2
Luxembourg	Art. 5, para. 2
Malta	Arts. 1, and 5, para. 2
Norway	Art. 5, para. 2
Poland	Art. 5, para. 2 (a)
Romania	Art. 5, para. 2 (a)
Russian Federation	General statement, art. 1
Slovenia	Arts. 1 and 5, para. 2 (a)
Spain	Art. 5, para. 2
Sri Lanka	General statement, art. 1
Sweden	Art. 5, para. 2
Trinidad and Tobago	Art. 1
Uganda	Art. 5, para. 2
Venezuela	a/

a/ A communication from the Government of Venezuela identical to one received with regard to article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights has been received by the Secretary-General.

7. Communications on reservations, declarations or understandings have been received by the Secretary-General as indicated below in table 6.

Table 6. Communications received on reservations, declarations or understandings made to the Optional Protocol to the International Covenant on Civil and Political Rights

Communication received from:	With respect to reservations, declarations or understandings made by:
Denmark	Trinidad and Tobago
France	Guyana, Trinidad and Tobago
Finland	Guyana
Germany	Guyana, Trinidad and Tobago
Ireland	Trinidad and Tobago
Italy	Trinidad and Tobago
Netherlands	Guyana, Trinidad and Tobago
Norway	Trinidad and Tobago
Spain	Trinidad and Tobago
Sweden	Guyana, Trinidad and Tobago

D. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

8. There are 43 States parties to the Second Optional Protocol. The States parties indicated in table 7 have communicated to the Secretary-General reservations, declarations or understandings with respect to it.

Table 7. Reservations, declarations and understandings made with respect to the Second Optional Protocol to the International Covenant on Civil and Political Rights

State party	Treaty provisions to which reservations, declarations or understandings were made
Azerbaijan	Art. 2, para. 1
Cyprus	Art. 2, para. 1
Greece	Art. 2, para. 1
(Spain)	(Reservation to art. 2, para. 1, withdrawn)
Malta	Art. 2, para. 1

9. The Secretary-General has received one communication with respect to the above: the Government of France has communicated its objection with respect to the reservation of the Government of Azerbaijan made upon the latter's accession to the Second Optional Protocol.

III. COMMUNICATIONS RECEIVED CONCERNING WITHDRAWALS

A. International Covenant on Civil and Political Rights

Democratic People's Republic of Korea

10. On 25 August 1997, the Secretary-General received from the Government of the Democratic People's Republic of Korea a notification of withdrawal from the Covenant, dated 23 August 1997.

11. As the Covenant does not contain a withdrawal provision, the United Nations Secretariat forwarded on 23 September 1997 an aide-mémoire to the Government of the Democratic People's Republic of Korea explaining the legal position arising from the above notification. As elaborated in this aide-mémoire, the Secretary-General was of the opinion that a withdrawal from the Covenant would not appear possible unless all States parties to the Covenant agreed with such a withdrawal. The notification of withdrawal and the aide-mémoire were duly circulated to all States parties on 12 November 1997.

12. On 20 March 2000, the Government of the Democratic People's Republic of Korea submitted its second periodic report due under article 40 of the Covenant.

B. Optional Protocol to the International Covenant on Civil and Political Rights

Guyana

13. On 5 January 1999, the Government of Guyana notified the Secretary-General that it had decided to denounce the said Optional Protocol with effect from 5 April 1999. On the same date, the Government of Guyana re-acceded to the Optional Protocol with reservations (see table 5). It may be recalled that the Government of Guyana had initially acceded to the Optional Protocol on 10 May 1993.

Jamaica

14. On 23 October 1997, the Government of Jamaica notified the Secretary-General of its denunciation of the Optional Protocol.

Trinidad and Tobago

15. On 26 May 1998, the Government of Trinidad and Tobago informed the Secretary-General of its decision to denounce the Optional Protocol with effect from 26 August 1998. On the same date, the Government of Trinidad and Tobago re-acceded to the Optional Protocol with reservations (see table 5). The Government of Trinidad and Tobago had initially acceded to the Optional Protocol on 14 November 1980.

16. On 27 March 2000, the Government of Trinidad and Tobago notified the Secretary-General that it had decided to denounce the Optional Protocol with effect from 27 June 2000.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Situation of human rights in Togo

Note by the Secretary-General

1. At its fifty-first session, the Sub-Commission had before it a report issued on 5 May 1999 by Amnesty International on the situation of human rights in Togo which was based on the results of a fact-finding mission conducted in November and December 1998. This report told of the torture and extrajudicial execution of hundreds of victims in Togo in 1998 and of enforced disappearances, arrests, arbitrary detention, ill-treatment and deaths in detention caused by the poor conditions in which detainees were kept.

2. On 20 August 1999, during the fifty-first session, the Chairperson of the Sub-Commission issued a statement on the situation of human rights in Togo. In his statement he expressed the Sub-Commission's concern at allegations that several hundred people had been victims of extrajudicial executions in Togo in 1998. The Sub-Commission also took note of the controversy which had arisen as to whether or not, or the extent to which, those allegations were true.

3. The Sub-Commission welcomed with satisfaction the initiative of the Government of Togo to create an international commission of inquiry in accordance with international norms, and welcomed favourably the proposal of the Government of Togo to request the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to set up the commission of inquiry in accordance with international norms. The Sub-Commission also noted the willingness of the Government of Togo to ask the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to provide, as required, the assistance necessary for the proper functioning of the international commission of inquiry.

4. In addition, taking account of the observations of the Sub-Commission, the Government of Togo undertook to provide the international commission of inquiry with help and assistance so that it would be able to accomplish its task with competence and within a reasonable time, in accordance with international norms, and to take all appropriate measures to ensure that the competent authorities cooperated fully with the international commission of inquiry.

5. Lastly, the Sub-Commission requested to be informed at its next session by the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity of the results of the efforts undertaken in the framework of the Chairperson's statement.

6. In September 1999 the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights and the Secretary-General of the Organization of African Unity began consultations among themselves and with the Government of Togo regarding the composition, organization, establishment and functioning of the international commission of inquiry.

7. On 13 July 1999 judicial proceedings were brought in the Lomé High Court against Mr. Pierre Sané, the Secretary-General of Amnesty International, on account of his organization's report. On 12 March 2000 the Government of Togo indicated that since the proceedings against Mr. Sané had been suspended, it would of its own accord withdraw its complaint once the commission of inquiry began its work in Togo.

8. On 7 June 2000 the Secretary-General of the Organization of African Unity and the Secretary-General of the United Nations announced the establishment of the International Commission of Inquiry for Togo. One of the three members, Mr. Amadou Ould-Abdallah (Mauritania) resigned and a new member was appointed on 20 July 2000. The Commission of Inquiry is currently composed of Mr. Mahamat Hassan Abakar (Chad), Chairman, Mr. Paulo Sergio Pinheiro (Brazil), and Mr. Issaka Souna (Niger). The first meeting of the Commission of Inquiry is scheduled to be held from 31 July to 4 August 2000 in Geneva.

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